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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, ET AL., PETITIONERS,

vs.

CITY OF TALLAHASSEE.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE STATE OF FLORIDA, SECOND JUDICIAL CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 13, 1962

CERTIORARI GRANTED APRIL 15, 1963

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE MUNICIPAL COURT, IN AND FOR THE CITY OF TALLAHASSEE, A MUNICIPAL CORPORATION OF FLORIDA

Case Nos. 77900-77912

CITY OF TALLAHASSEE, Plaintiff,

vs.

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. MCKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN J. POLAND, JR., and PRISCILLA G. STEPHENS, Defendants.

AFFIDAVIT—June 20, 1961

Before me, John A. Rudd, Judge of the Municipal Court of the City of Tallahassee, Florida, personally appeared James Messer, Jr. and Edw. J. Hill, who, being duly sworn, say that on, to-wit: the 16th day of June, 1961, upon property owned and operated by the City of Tallahassee, Florida, and located in Leon County, Florida, namely, the Tallahassee Municipal Airport, Israel Dresner, Austin M. Warner, Robert M. Brown, Petty D. McKinney, Martin Freedman, Arthur L. Hardge, Robert J. Stone, Wayne C. Hartmire, J. W. Collier, Jr., Ralph L. Roy, Chas. A. Hunter, John J. Poland, Jr., and Priscilla G. Stephens:

Count I

Did then and there unlawfully assemble in that they did, and they being more than three (3) persons, met together to commit a breach of the peace, acting together and con- [fol. B] certedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules depart-

ing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace, and while so unlawfully assembled a police officer of said City did go among these persons so assembled, and making himself known to them and each of them, did, in the name of the State and City, command those so unlawfully assembled to immediately and peaceably disperse, and they and each of them did then and there refuse and/or neglect to obey such command when given, contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida.

James Messer, Jr., City Attorney.

Edw. J. Hill, City Solicitor.

Sworn to and Subscribed before me this 20 day of June, A.D. 1961.

John A. Rudd, Municipal Judge, City of Tallahassee, Florida.

[fol. C] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. D]

IN THE MUNICIPAL COURT,

IN AND FOR THE CITY OF TALLAHASSEE,

A MUNICIPAL CORPORATION OF FLORIDA.

Case Nos. 77900-77912

CITY OF TALLAHASSEE, Plaintiff,

—vs.—

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. MCKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN J. POLAND, JR., and PRISCILLA G. STEPHENS, Defendants.

Transcript of Proceedings of June 22, 1961

Transcript of proceedings had and testimony taken in the above-entitled cause before the Honorable John A. Rudd, Judge of the Municipal Court, Tallahassee, Florida, on Thursday, June 22, 1961, commencing at 9:10 o'clock a.m.

APPEARANCES:

James Messer, Jr., City Attorney, City Hall Building, Tallahassee, Florida, and

Edward J. Hill, City Prosecutor, City Hall Building, Tallahassee, Florida, on behalf of plaintiff,

Tobias Simon, Esquire, 706 Ainsley Building, Miami, Florida, and

[fol. E]

Howard W. Dixon, Esquire, Seybold Building, Miami, Florida, and

Alfred I. Hopkins, Esquire, 1701 Meridian Avenue, Miami Beach, Florida, By: Tobias Simon and Howard W. Dixon, Esqs., on behalf of defendants.

* * * * * * *

[fol. 4] The Court: These defendants were arraigned on a docket entry Saturday morning, a brief description of the charge being unlawful assembly except Priscilla G. Stephens is charged in addition to unlawful assembly with interfering with a police officer in performance of his duties and resisting arrest.

Does the defense care to have a formal arraignment at this time?

MOTION OF DEFENDANTS TO QUASH AND TO DISMISS THE CHARGES

Mr. Simon: At this time, if Your Honor please, the defense will move to quash and to dismiss the charges against [fol. 5] these defendants on the following grounds:

First, that the charges of the City of Tallahassee do not state an offense against the defendants under the ordinances of the City of Tallahassee or the statutes of the State of Florida.

Second, the alleged offenses occurred beyond the city limits of the City of Tallahassee and this Court is without jurisdiction to try these offenses.

Third, the statute pursuant to which the defendants were arrested and with which the defendants are charged and which they are charged with having violated, namely Florida Statutes, Chapter 61-237, is invalid and is unconstitutional, constitutes a denial of rights under the Declaration of Rights of the Florida Constitution and constitutes a denial of rights under the Federal Constitution to the United States and the 1st and 14th Amendments thereto and as a consequence these arrests were unlawful and the charges based thereon are without foundation.

Next, the defendants with constitute a party of negroes and whites who were located in a municipally owned airport in the City of Tallahassee and were attempting to use the public facilities of this airport on a racially unsegregated basis acted at all times in a peaceful and dignified manner; their arrests constitute a denial to the defendants of the equal protection of the law under the 14th Amendment to the Federal Constitution and a denial of due

[fol. 6] process of law, a denial of privileges and immunities of State citizenship guaranteed thereby; a denial of the privileges and immunities of Federal citizenship since they were at all times on and in an instrumentality of the municipality of Tallahassee and were attempting to use the facilities thereof, which facilities are required by Federal law to be made available to all citizens without regard to their race or color.

Next, the defendants at the time of the arrests were passengers in interstate commerce awaiting departure at the Municipal Airport of Tallahassee of their plane from Tallahassee to points beyond the State of Florida and their arrests constitute a violation of their rights of unfettered travel free of racial discrimination under the Interstate Commerce Clause of the Federal Constitution, namely Article 1, Section 8, Clause 3, and a violation of their privileges and immunities of Federal citizenship, a violation of the Federal Aviation laws and a violation of the Federal Aviation Act of 1958 and, in particular, Section 404 of said act, same being 72 Statute 760, 49 U.S. Code, Section 1374-B.

The arrests of the defendants and their prosecution constitute a violation of their liberty of contract as guaranteed by the 14th Amendment to the Federal Constitution.

Next, the acts of the city officials in arresting and in participating in the arrests of these defendants and these prosecutions based thereon and the concomitant failure of [fol. 7] the city officials to arrest certain other persons in the vicinity who were threatening to exhibit acts of violence because of the defendants' presence at the aforesaid airport and because of the defendants' endeavor to use the airport facilities on an unsegregated basis constitutes racial discrimination in violation of the due process clause—

The Court: Hold on a minute.

Are you making a motion, arguing a motion or are you testifying?

Mr. Simon: I am making a motion.

The Court: Leave out your facts and make the motion according to law.

Mr. Simon: (Continuing) —in violation of the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the Constitution of the United States and

corresponding provisions of the Florida Constitution whereby the defendants respectfully move this Court to quash and dismiss the information and charges herein filed.

* * * * * * *

[fol. 20] Thereupon, JAMES MESSER, JR., called as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hill:

Q. State your name for the record.

A. My name is James Messer, Jr.

Q. Are you a resident of Tallahassee, Leon County, Florida?

A. I am.

[fol. 21] Q. What is your occupation?

A. I am an attorney at law; I am City Attorney of the City of Tallahassee and a special police officer of the City of Tallahassee.

Mr. Simon: I object to that answer and move that it be stricken on the grounds that it is not responsive to the question and further that the best evidence of that fact would be his license.

The Court: Objection overruled.

The Witness: If the Court please, I have this (indicating).

Mr. Hill: If the Court please, I have here a letter from the City Manager of the City of Tallahassee appointing Mr. James Messer as a police officer.

The Court: Mr. Messer just testified under oath he was these things and it is up to the defendants if they do not believe him to impeach him.

I see no need to support your own testimony.

Mr. Hill: All right.

Q. Were you such a police officer on the 15th and 16th days of June, 1961?

A. I was.

Q. Were you on duty as such a police officer on these days?

[fol. 22] A. I was.

Q. Did you on the 15th and 16th days of June, 1961 see these 13 defendants here (indicating)?

A. Yes, I did.

Q. Where did you see them on either of those days or both of them?

A. On the 15th I saw the defendants with the exception of Priscilla Stephens and John Poland at the Greyhound bus terminal in Tallahassee.

Q. You were at the bus terminal?

A. There are one or two others that I didn't see. They are named in the charges. I believe Hunter is one.

Q. You do not remember seeing Hunter?

A. I do not remember seeing Hunter; at least I couldn't identify him.

Mr. Simon: I can't hear you.

Mr. Hill: If Your Honor please, I believe that Mr. Simon can hear me.

If you are trying to harass me I will yell just as loud as I can.

Mr. Simon: I think you know that isn't the case. I simply can't hear you. You are speaking in too low a tone.

Q. What were the circumstances under which these defendants were seen by you at the bus station on the 15th [fol. 23] day of June?

A. I was requested by the Mayor, the Chief of Police—

Mr. Simon: I object on the ground the same is hearsay.

The Court: I will rule on your objection when he gets through answering.

Mr. Simon: If Your Honor please, that would destroy the effect of the hearsay rule. He is about to testify—

The Court: He hasn't said anything what he has been instructed about, Mr. Simon. Mr. Messer is familiar with the hearsay rule, I am sure, and will avoid that.

A. I was requested to go to the Greyhound bus terminal on June 15, to be there at approximately 11:30.

Q. Did you go there?

A. I did.

Q. What did you do?

A. I went into the bus terminal. There were very few persons there. Some apparently elderly people were waiting for buses and some people were seated in the lunch counter but very few people were present at the time I arrived with the exception of police officers of the City of Tallahassee, a member of the State Highway Patrol, a representative of the Sheriff's Office and representatives of the [fol. 24] Sheriff's Bureau of the State of Florida.

Q. Did you receive advance information that these people or these defendants or other people similarly situated would come into this bus station at or about that time?

A. Well, it was announced on television and I received other information which I consider to be reliable that they were to arrive about 11:30.

Q. Did they so arrive?

A. They did.

Q. Would you describe the circumstances under which they arrived, Mr. Messer?

A. There were two buses that entered the bus terminal from the entrance off of West Tennessee Street. They came in the west entrance from what is commonly referred as the loading platform and went into the bus terminal.

Q. Do you know about how many people were involved in this group and if that group was composed of these defendants?

A. I only observed their entrance. I was on duty outside of the terminal, the main entrance there at the intersection of Adams and Tennessee.

I would judge there were about some 20, maybe 25. I didn't make an actual count.

Q. Were these ten defendants that you have just referred to excluding the three that you excluded earlier in [fol. 25] your testimony, were they present?

A. Yes.

Q. What were the circumstances surrounding the bus station at that time other than the large crowd of people that you have just referred to?

A. About I would say 15 or 20 minutes before they ar-

rived a rather large crowd gathered in front of the bus terminal, across from the bus terminal, that is across Adams Street and those that Officer Daws—he was on duty inside the front door and I was outside—turned away, they had gone around and gotten in the back way some way.

There was quite a crowd in there and the police officers succeeded in getting them to leave. Then there was a group that came up to the entrance of the terminal, the front door, and attempted to go in and they were turned away.

There were rather vile epithets or rather vile language used and criticism against the Police Department for permitting the bus company to serve the Freedom Riders with food.

Q. Were these people provided with every protection that you know that was available to the City and the community?

The Court: What people? "These people" you say.

Q. This group of people that you are referring to which includes these defendants.

The Court: These ten defendants?

[fol. 26] The Witness: That's right.

A. Yes. As I pointed out there were several uniformed officers of the Police Department, there were a number of them in plain clothes, there was at least one member of the Highway Patrol and the Sheriff of Leon County was present. He had with him at least two deputies and there were representatives of the Sheriff's Bureau. I understand there were representatives of the FBI present but I couldn't identify them, but there was ample police protection afforded.

Q. I believe you have testified or if you have not may I ask you: These ten defendants you have referred to, did they come into this community or to this City in one group?

A. There were two buses. I don't know whether all of the defendants here (indicating) were riding on the same bus or not but there were two buses of the so-called Freedom Riders of which these defendants were a member.

Q. Did those buses arrive in Tallahassee at or about the same time?

A. One was following the other.

Q. Is the Greyhound terminal within the corporate city limits of Tallahassee, Florida?

A. Yes.

Q. Did this assembly or this meeting of the so-called Freedom Riders, was it in any way in your opinion—was [fol. 27] the assembly of these people, this group, these ten and those that were arriving with them, was that assembly attended with any circumstances that excited any alarm in your opinion?

Mr. Simon: I object on the grounds the witness hasn't shown to be properly qualified to render opinion evidence and further it calls for a conclusion of the witness; further that it is based, obviously, upon hearsay evidence.

Mr. Hill: May I answer that? One of the elements of common law and statutory crime or offense, that is of unlawful assembly, is whether or not in the opinion of firm and rational people in the community this assembly is calculated to excite, alarm and to inspire fear or other breaches of the peace and therefore it is perfectly competent for a man of this kind to give his opinion as to whether or not it is. Otherwise, Your Honor, no law enforcement officer or anybody under the statute could be authorized to disperse an assembly, would never have any right or authority on which to make a move.

Mr. Simon: If Your Honor please, we respectfully submit even if that is the case the proper predicate hasn't been shown in this instance.

The witness has already testified ample police protection was available.

The Court: The qualifications or predicate you would have to lay for a person to testify under this statute would [fol. 28] be that which establishes him as a responsible, level headed citizen and member of the community and knowing Mr. Messer as long as I have and as well as I do the Court takes judicial knowledge of the fact that he is such a person and the objection is overruled.

Mr. Hill: Will the Reporter please read that question back? I would like him to answer it.

(The question referred to was read back by the Reporter.)

Mr. Simon: Just a moment. I believe, Your Honor, that two witnesses for the defense have just come into the room. They were not aware of the invocation of the Rule and I would like them to be called before the bar at this time and sworn and instructed in the Rule.

The Court: All right. Call them up.

(Addressing the two witnesses) You will remain outside the courtroom and don't talk about the case with anyone except the City Attorneys and the defense attorneys and we will administer the oath at the proper time.

A. As I stated before, there was a considerable number of people assembled on the northeast corner of the intersection of Adams and Tennessee Streets just across the street from the main entrance to the bus station. A group had assembled at the front door of the bus terminal build- [fol. 29] ing. Rather vile language was used toward the defendants and efforts made by some of those assembled to enter the bus station. One of them claimed that he had special permission from the Mayor and the Mayor happened to arrive at that time and the Mayor denied having given any such permission and finally it became necessary for me to call my assistant, a uniformed member of the Police Department who was Lieutenant Gasaul (phonetic spelling), and to order him to order a dispersal of the crowd.

Q. Did they so disperse?

A. After Lieutenant Gasaul moved in. I had dispersed three or four prior to that but this large group, the one that seemed most indignant about the actions of the City of Tallahassee—

Mr. Simon: I object. I don't think that the witness is properly qualified to describe a crowd as being indignant. He can tell what he saw. I object to the conclusion.

The Court: Objection overruled.

Q. Mr. Messer, is it your opinion there was a possibility of danger to the peace and tranquility of that neighborhood at that time?

Mr. Simon: Same objection as I made before.
The Court: Objection overruled.

A. There was.
I might add that I was present at most of the sit-ins that [fol. 30] took place at the dime store and restaurants—

Mr. Simon: I object. It is immaterial and irrelevant to describe prior matters not involving these defendants.
The Court: Objection sustained.

Q. What else did you do there at that time, Mr. Messer?
A. I did nothing other than keeping people from entering the bus station that had no business there. In other words, they were not travelers, they were not going in to buy a ticket, they were not going in to take a bus.
Q. Would you say the peace was maintained at that time?
A. Absolutely.
Q. Did you at any other time on this day see these ten defendants?
A. Yes. I saw them at the Tallahassee Municipal Airport that afternoon.
Q. At about what time, please, sir?
A. I would judge about around 4:00 o'clock.
Q. What were the circumstances at that time, Mr. Messer?
A. I received a telephone call I believe from you in which you suggested—

Mr. Simon: I object. That is hearsay evidence.
[fol. 31] The Court: The statement was you received a telegram?
The Witness: I received a telephone call and in response to that call went out there.
The Court: You can testify as to what you did in response but not what the call was.
The objection is overruled.

A. I was taken out there. I believe the Chief of Police, Mr. Stoutamire, took me.
Q. This was Thursday afternoon, June 15th?
A. Yes.
Q. What were the circumstances in attendance at that time?

A. Well, it appears that the defendants who ate or finished eating about 2:20 or I judge around 2:20 went out to the airport and wanted to eat again.

Q. And were these ten defendants there at that particular time when you arrived there?

A. Yes.

Q. Were the other three defendants that you have heretofore testified were not present there?

A. I don't recall seeing them at that time, no.

Q. Were there other groups there in attendance at that time?

[fol. 32] A. No, other than passengers at the airport. There were a number of people at the entrance to the airport. I recall distinctly when we arrived there were two cars that the police officers had stopped. They were not permitted to enter the airport.

Q. Would you say that adequate police protection was being provided at the airport at that time?

A. Very definitely.

Q. Were there other law enforcement agencies there other than the Tallahassee Police Department?

A. Yes. There were members of the State Highway Patrol and members of the Police Department of the City of Tallahassee.

Q. Since you testified that these ten defendants were there, where were they within the premises of the Municipal Airport at that time?

A. They were seated on a bench there approximately in the center of the lobby of the airport terminal building.

Q. Do you know how long they had been there?

A. No, I don't. They hadn't been there too long because I saw them leave the bus terminal. I would judge that they were there approximately an hour or an hour and a half, about an hour and a half.

Q. Did you see them later on June 15th, 1961?

[fol. 33] A. I stayed out to the airport until about 5:10.

Q. Do you know whether or not any scheduled airplanes belonging to the two airlines that have facilities here, whether any of them had departed the airport after these defendants arrived?

A. No—let me state this: There was a much larger group of these—I identify them as Freedom Riders—at the bus terminal than there were at the airport when I arrived.

I arrived—it was the departure of the three twenty-five Eastern Airlines plane. Whether they took off on that or not, that is something I can't testify to.

Q. Did you see them any further on June 15th?

A. Not after leaving the airport shortly after 5:00 o'clock.

Q. Did you see these ten defendants or these 13 defendants on June 16th, 1961?

A. Yes, I did.

Q. Under what circumstances and at approximately what time, Mr. Messer?

A. I arrived at the airport at approximately, I would say, between 12:15 and 12:20—

Mr. Simon: If Your Honor please, I move to strike the answer on the grounds that it is just not responsive to the question. Of course, I don't know how the answer could [fol. 34] have been made responsive to the question because the question was "These ten or these 13 defendants, did you see them?" I don't know how he could answer that question just plain "Yes."

The Court: The question was whether or not he had seen these ten defendants or, rather, these 13 defendants on the 16th.

Mr. Simon: Yes, sir. Which is it? I think the record is entitled to show whether he saw the ten or the 13 defendants.

The Court: He corrected the ten and said 13, I believe.

Mr. Simon: Is that a correction?

A. Let me clarify it.

The Court: Clarify the question first. You asked him about ten defendants or 13?

Mr. Hill: I asked him about 13.

The Court: Now answer the question.

A. I do not recall seeing a defendant by the name of Hunter. I don't recognize him. I did see Priscilla Stephens

and I did see the defendant Jeff Poland. They were in the lobby of the airport terminal building.

Q. Are those two persons that you have just named in distinction from the other Freedom Riders as you have referred to them? Are they additional people that you saw [fol. 35] on the 16th from the ones you left there on the evening of the 15th?

A. Yes. They could have been there but I didn't see them.

Q. But they were there on the 16th?

A. Yes.

Q. What time did you say you arrived there, Mr. Messer?

A. I arrived there at approximately either—I would say between 11:15 and 11:20. Wait a minute. I beg your pardon. That is 12:15.

Q. I believe you heretofore testified that you are a police officer of the City of Tallahassee and were such on this date?

A. That's correct.

Q. What did you do then with respect to these 13 defendants?

A. I went into the city office at the airport and after conferring with the Mayor and the City Manager and the Chief of Police—I believe there was also a representative of National Airlines from the office of the airport manager's that the City has out there—I went out into the lobby to ascertain the number of persons assembled there or the identity of the persons assembled and went into the Men's Room. Then I came by the telephone booths which are in a corridor there and then went by—returned back by [fol. 36] the telephone booths to ascertain there were no persons in there and then I went back to the office of the airport manager and following that, accompanied by the Chief of the Police Department of the City of Tallahassee and Officer Bennett, I believe it is Lieutenant Bennett, I read to those assembled in the lobby, the defendants here (indicating) and—I believe Priscilla Stephens was there at that time I approached Jeff Poland who was there—I read to them the proclamation and requested them to disperse.

Q. Did you identify yourself?

A. I first—the first thing I did was to inquire as to who was the leader of their group. A person stood up and identified himself as the Reverend James W. Collier. I said, "I want to identify myself." I said, "I am—my name is James Messer, Jr. I am City Attorney and a police officer of the City of Tallahassee."

I then took from my pocket a police badge. I said, "This is evidence of my authority. I am going to read to you a proclamation."

Q. Did he attend to the reading of this proclamation?

A. He did. He stood up. I read to him the proclamation.

I have a copy of the proclamation here (indicating) which I read to him with some additions I made which I can [fol. 37] describe to the Court.

Q. Will you tell us what you said?

A. In the proclamation I said, "My name is—"

Mr. Simon: I object to the witness reading from any document which is not in evidence.

The Court: Those are notes you used at the time, Mr. Messer?

The Witness: Yes. This is a blank form which was filled out just prior to my reading it to the group assembled at the terminal.

The Court: You may testify from it if you like.

Mr. Simon: If Your Honor please, I respectfully represent that a witness is required to testify from memory without the aid of notes unless it can be established that his memory is faulty. If he is going to read a document the document should be in evidence for the benefit of the Court.

The Court: If the witness made notes prior to an act and used those notes in the course of this act and retains those notes for the purpose of perfection and brevity he is allowed to read it into the record as a part of the testimony.

Go ahead.

A. The proclamation that I read is as follows: "My name is James Messer, Jr. I am City Attorney and a special police officer of the City of Tallahassee. I am advised that [fol. 38] your assembly here will tend to create a disturb-

ance or incite a riot or disorderly conduct within the City of Tallahassee," and at that point I added, "at the Municipal Airport of the City of Tallahassee."

Then I also added that pursuant to an act of the legislature we had police jurisdiction over the property owned and operated by the City of Tallahassee even though located outside of its corporate limits. I also mentioned the incidents which the defendants were familiar with which occurred the night before and that we had good reason to believe that even a more substantial number of persons were present at the airport that night.

Then I continued: "Therefore, as a special police officer of the City of Tallahassee and in the name of the State of Florida and the City of Tallahassee I command all of you who are here assembled immediately and peaceably to disperse." I there added, "And that means from the airport property of the City of Tallahassee." I continued: "If you do not immediately and peaceably disperse I shall cause you to be arrested for unlawful assembly."

Q. Did the Reverend Collier you were speaking to as spokesman for these defendants and all of them, did he hear what you said and did he attend and did he respond?

A. I might state that I gave—I concluded by saying, "I will give you 15 seconds to disperse."

[fol. 39] Reverend Collier who was standing said, "But we are interstate passengers." I replied to him in the presence of all of the defendants, possibly with the exception of Poland and Hunter and Priscilla Stephens, that "I did not consider you a bona fide interstate passenger. You made and cancelled at least three airline reservations."

Actually I waited until about a minute, between a minute and a quarter and a minute and a half, and then turned to the Chief of Police who was standing on my right and remarked to him, I said, "Chief, you can carry out your orders."

Q. During the time that you were discussing with the spokesman that you didn't consider them to be interstate passengers and the conversation between you did they have time to respond to your request?

A. Yes. There was some—for instance, there was a person in the audience there, Dan Speed, when I got about

two-thirds through with the proclamation he headed for the door and there were two young boys, negro boys, following him.

Just as I finished the proclamation or maybe shortly afterwards he came back and said to the Chief of Police who was standing just to my right, he said, "Chief, I am trying to get out of this thing and get out of the building," and he said, "they got the door blocked." The Chief said or turned to one of the officers present and said, "Tell Offi- [fol. 40] cer Kelley—" I believe he was on the door—"to let Speed and his companions out."

Q. Did the Reverend Collier acknowledge your proclamation in any way?

A. Other than he saying that he was an interstate passenger and he started off to say that we had no right to order his removal from the airport. I replied to him, I said, "I don't intend to argue with you."

Q. Did he disperse or refuse to disperse?

A. He sat down and as I recall opened his newspaper and started reading from it.

Q. Did the other members of the group, the ones for whom he was the spokesman, did they respond to your proclamation?

A. I did not see—

Q. In short, did they leave?

A. No, they did not.

Let me clarify that: I did not see in the group arrested the defendant Jeff Poland. I don't know where he was, nor did I see Priscilla Stephens that was taken into custody inside of the terminal, the lobby of the airport terminal.

Q. You say they did disperse, those two?

A. I don't know. Frankly, I was reading and I did see Dan Speed disperse and the two rather young boys that were with him. I say "young boys"—they looked like they [fol. 41] were around 19 or 18.

Q. Did you then see Lieutenant Bennett place these defendants under arrest?

A. Yes. Lieutenant Bennett said, "You are all under arrest," and he immediately got up and some had baggage with them and some didn't and they were escorted out to the police cars outside of the terminal.

Mr. Hill: I have no further questions.

Mr. Simon: May I have about two minutes to confer with my associate?

The Court: The Court will take about a five minute recess.

(A short recess was taken.)

The Court: Call your next witness.

Mr. Simon: If Your Honor please, we reserve the right of cross examination.

The Court: Excuse me. I am sorry. I overlooked that. Go right ahead.

Cross examination.

By Mr. Simon:

Q. Mr. Messer, other than the reading of the proclamation which you have previously identified did you have any conversation with any of the 13 defendants?

A. Not prior to their arrest.

Q. Did you have any conversations at all during the [fol. 42] 15th and 16th of June with the representatives or personnel of the Federal Bureau of Investigation?

A. No, I did not.

Q. Did you during the same period have any conversations with any United States Marshals?

A. I did not.

Q. During the same period did you have any conversations with the Governor of the State of Florida or any representatives of his office?

A. Yes. I had two conversations by telephone with the Governor of the State of Florida on Friday, June 16th.

Q. Was that prior to the arrest?

A. That was prior to the arrests.

Q. What was the substance of that conversation?

A. I was in the—

Mr. Hill: I object to that. It is hearsay.

Mr. Messer: This is cross examination.

Mr. Hill: It is not cross examination. I didn't bring that

up on direct examination, any conversations with the Governor.

Mr. Simon: I propose the witness act as a witness and not to instruct you as to what objections to make to the questions.

The Court: If you have an objection, Mr. Simon, address [fol. 43] it to the Court. Mr. Hill has objected to a telephone conversation as being hearsay.

Is that your objection, Mr. Hill?

Mr. Hill: I will withdraw it.

Go ahead.

The Court: The objection is withdrawn. Proceed.

A. I was at a conference in the City Manager's Office along with other members of the City Commission and the Governor called me on the telephone and as he started the conversation he said, "Excuse me." He said, "The Attorney General of the United States is on another line and I will call you back."

The second time he called—do you want the substance of that conversation?

Q. Yes, sir.

A. This was at approximately—because I looked at my watch—approximately three or four minutes after 10:00.

Q. This is on Friday, June 16th?

A. This is on Friday, June 16th.

Q. In the morning?

A. In the morning.

He stated that he talked with the Attorney General and that the Attorney General had stated that during the next two hours he would endeavor to get in contact with the defendants and the leader of the group of the defendants at [fol. 44] the Municipal Airport and ask them to cease their activities in Tallahassee and to leave and he suggested that we withhold any action during that two hour period.

Q. Was that the end of the conversation?

A. I might add at that time Commissioner William Mayo came into the conference. He was not there when we first started. He verified the conversation that I had with the Governor, the fact that he was there when the Governor had talked to me and he talked with the Attorney General.

Whether he heard any conversation between the Governor and the Attorney General I don't know because it was then agreed—at least I was requested to be back by quarter of 12:00 in the morning, Friday, the 16th, in the City Manager's Office.

Q. You were requested by the City Manager?

A. The City Manager and the Mayor.

Q. At the time that you read your proclamation did you see the defendant Poland seated in the terminal at the airport?

A. As I recall Poland was standing but he was in the group. Now, that was the time that I went out into the lobby prior to reading the proclamation.

Q. Do you know whether or not the defendant Poland obeyed the statement you made to leave the terminal?

A. Frankly, Mr. Simon, I don't know. I did not see Poland when the officers placed those seated in the lobby [fol. 45] under arrest.

Q. So, then, you don't know whether he obeyed or disobeyed your statement?

A. No, I do not, frankly.

Q. With regard to the defendant Priscilla Stephens, do you know whether she obeyed your statement to her?

A. I did not see her taken into custody in the lobby.

Q. Then you don't know whether she even heard your statement?

A. I don't know whether she heard all of it or not.

Q. You don't know whether or not she obeyed or disobeyed it?

A. No. Frankly, when I finished reading I was looking at the paper and I don't know whether she left. I did see Dan Speed and these two boys take off and she may have done that and Poland may have done that, I just don't know.

I did see Priscilla Stephens outside in the entrance to the airport while the defendants were taken into custody or arrested and observed her activities out there.

Q. With regard to the defendant Charles A. Hunter, do you know whether he heard the proclamation that you read to the group?

A. I don't believe I can identify Hunter. If he is pres-

ent, if you will have him stand, I will see if I can identify [fol. 46] him.

Q. You don't know whether he obeyed or disobeyed your statement?

A. I don't know the names of these various defendants. I mean, I couldn't call them by name. I can identify those that were there and did not obey. Which one is Hunter here (indicating) I couldn't say.

Q. You stated that there were two hours in which the defendants were to be given time to cease their activities, is that correct?

A. No. I was advised by the Governor that the Attorney General had asked for two hours in which to contact the defendants or their leader. In other words, the request from the Governor was that no action be taken during that time.

Q. What activities of the defendants were mentioned?

A. Mentioned by the Governor?

Q. Yes, sir.

A. Their presence out at the Municipal Airport, making reservations and cancelling them and just sitting there.

Q. Did I understand you to say in your testimony, sir, that somebody wanted to leave the terminal and wasn't able to?

A. Dan Speed whom I have known for years who is seated over there (indicating) was present when I walked up to the group and started to read the proclamation or [fol. 47] order of dispersal and as I started reading it he left very hurriedly accompanied by two young boys, I would judge they were around 19 or something like that.

After I had finished the proclamation he came back to the Chief of Police who was standing about two or three feet to my right and said, "Chief, I tried to get out of the door and the officer won't let me out."

Q. Who said that?

A. Speed, Dan Speed.

The Chief immediately turned to another officer and said, "Ask Officer Kelley to let Dan Speed and his companions out."

Q. Was there a cordon thrown around the airport for the purpose of preventing people from leaving?

A. I think there was—the purpose was preventing people from entering as well as leaving. I didn't know they were going to prevent them from leaving but apparently the officer on duty did not immediately permit people to leave. I think the principal thing was to prevent persons from coming in there who had no business in there, I mean airport business.

Q. Do you know whether all of the facilities of the terminal were in operation on the 15th and 16th of June?

A. What facilities do you have reference to?

Q. All of them.

[fol. 48] A. Well, of course, there are a lot of facilities out there. There are radio communication facilities, restaurant facilities, rest rooms. I assume you have reference to the restaurant or cafe?

Q. I am not asking you to make any assumptions, Mr. Messer. I am interested in whether you know whether or not all of the facilities at the airport were in operation during these two days, the 15th and 16th of June.

A. You mean facilities open to the public?

Q. Yes.

A. The restaurant on the 15th and 16th during the time that I was there was closed. The ticket counters of the airlines appeared to be open. The car rental service was open. The rest rooms were open. The telephone booths were available and as far as I know the airlines were functioning normally in their customary operation.

Q. Were you present at a conversation in which the person in charge of the restaurant was instructed to close the restaurant?

A. No, I was not.

Q. Do you know who was?

A. No, I don't. I don't even know who the manager or the person in charge of the restaurant is.

Q. You did know that such a conference had taken place [fol. 49] though, did you not?

A. No. The only information I had was at the bus terminal station someone told me that a group was going to take the 3:25 plane, I believe it is an Eastern plane, to Atlanta for connections in New York.

The Court: The question was whether or not you knew about any order to close the restaurant facilities. Is that right?

Mr. Simon: I believe so, yes, sir.

The Court: Answer it.

A. I knew of no order being given, no.

Q. You were about to tell us that information concerning such an order had come to you at the bus terminal, is that correct?

A. No. There was no order—

Mr. Hill: Just a minute. I object at this time as being improper cross examination and I withdrew an objection just a little while ago for the benefit of Mr. Simon and now he is going far afield. If I am not mistaken he has issued a subpoena for someone in connection with the restaurant facilities who I assume he is interested in having testify.

I did not examine Mr. Messer on direct examination relative to any restaurant facilities. I merely interrogated him directly relative to the conduct of these people, the [fol. 50] police protection that had been afforded them while they were in our City, the manner in which he read his proclamation to them at the time he did, how the arrests were made and items of that nature.

All of this is beyond the realm of cross examination. If he wants to make Mr. Messer his own witness then I would not press it.

The Court: Objection is sustained on the basis or on the ground it is not proper cross examination, not brought out on direct and on the further grounds that any conversation he had about any such order would be hearsay and not quite proper.

Mr. Simon: Then at this time we will reserve the right to call Mr. Messer as an adverse witness as being one of the officers of the plaintiff.

The Court: You can call him as a witness. You will have to establish his adversity at the time.

Q. You stated, Mr. Witness, that you had a proclamation in your hand that you read to these Freedom Riders, is that correct?

A. Yes, that's correct.

Q. May I see it, please?

A. Let me explain that that is the entire statement that was read (handing document to Mr. Simon). There was other matters mentioned which I testified to.

Mr. Simon: May I ask the Court Reporter to have this identified as Defendants' Exhibit "1-A" for identification? [fol. 51] The Court: I don't know about introducing any document on cross examination.

Mr. Simon: I haven't introduced it. I want to have it marked for identification so that if we do offer it at the time of our case in chief it will be recognized as being the same document that was delivered to us.

The Court: All right, so admitted for purposes of identification.

(Proclamation referred to was marked Defendants' Exhibit "1-A" for identification.)

Q. Mr. Messer, is this one of a number of similar documents that were prepared?

A. Yes. Those were prepared some days prior to the arrival of the defendants in the City. As a matter of fact, they were prepared during the session of the legislature.

Q. That would be sometime during the month of May, 1961?

A. Yes.

The Court: Any further questions, Mr. Simon?

Mr. Simon: Just a moment, if Your Honor please.

We have no further questions.

The Court: Any redirect, Mr. Hill?

Mr. Hill: Yes.

[fol. 52] Redirect examination.

By Mr. Hill:

Q. Mr. Messer, you indicated in response to some of Mr. Simon's questions on cross examination that there was a door at which Dan Speed was not allowed out. How far was that door from where you were standing and talking to this group?

A. I would say about possibly 40, maybe 50 feet. It was one of the doors to the entrance to the airport.

Q. Did these defendants here (indicating) make any move to go towards that door to your knowledge other than what you already stated?

A. I cannot testify that Priscilla Stephens did not attempt to leave.

Q. I am asking you, the fact that you have testified that Dan Speed said that he couldn't get out of that door, was that door barred to these ten defendants that you have referred to excluding Poland, Stephens and Hunter?

A. Not that I know of because they sat down. They just remained seated and more or less turned their backs on me.

Q. Is your answer that that door did not exclude them from leaving?

A. If they had gotten up to leave they would have been permitted to leave.

Mr. Hill: I have no further questions.

[fol. 53] The Court: Call your next witness.

(Witness excused.)

Thereupon, PAUL CANNEDY, called as a witness by the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hill:

Q. Mr. Cannedy, this air conditioner is making a little noise. We will all have to hear you. Speak loud.

Will you state your name for the record?

A. Paul Cannedy.

Q. How old are you?

A. 41.

Q. Do you live in Tallahassee, Leon County, Florida?

A. Yes, sir.

Q. What is your occupation?

A. Station manager, Eastern Airlines.

Q. Were you the station manager for the Eastern Airlines on the 15th and 16th days of June, 1961?

A. Yes, sir.

[fol. 54] Q. Where are you stationed?

A. Tallahassee Municipal Airport.

Q. Do you know whether or not you had a block of 18 reservations to leave on your Flight 268 to leave on June—

Mr. Simon: I object. He is leading the witness.

The Court: He asked him whether or not he knew.

Mr. Hill: I asked him did he have a block of tickets.

The Court: Answer the question yes or no.

A. Yes, sir, I knew it.

Q. You did have such a block of tickets?

A. Yes, sir.

Q. What happened to that block of seat reservations or tickets?

A. The reservations were held in good faith, booked by our New York office. The parties that held the reservations checked in at normal check-in time and just a few minutes before scheduled flight—

Q. On what date?

A. On the 15th, the afternoon of the 15th, Thursday afternoon.

A few minutes prior to flight departure eight of the gentlemen elected to ride and ten of the parties cancelled their reservations.

[fol. 55] Q. Could you tell us the names of the ten parties who cancelled?

A. Yes, sir. I think I have all of those here (indicating). Just a moment, please.

(After examining records) The gentlemen that cancelled are Brown, Collier, Dresner, Freedman, Hartmire—

Mr. Simon: Would you spell that, please?

The Witness: H-a-r-t-m-i-r-e. That is what is on the card.

Q. Could that be Hartmire or are you reading from somebody's notes?

A. I am reading from the teletyped copies as it was received from our printer. It says H-a-r-t-m-i-n-e. That is the way it came off the printer.

Q. What are the initials that precede that name?
A. M.
(Continuing) —Hardge, Roy—we had two parties of Smith, one had been previously cancelled as I recall from the record—Warner and Stone.
Q. Mr. Cannedy, are you reading all 18 of those reservations?
A. No. I am just reading the names of those that did not ride.

Mr. Hill: May I ask the Court Reporter to check those [fol. 56] or read those back to me, please, sir?

Q. That did not ride?
A. Yes, sir.

Mr. Hill: May I have that?
The Court: Yes, sir.
Read that back (addressing the Reporter).

(That portion of the record referred to was read back by the Reporter.)

Q. Mr. Cannedy, that is nine. Were there any other cancellations out of that 18? Did you read the name McKinney?
A. What?
Q. McKinney, M-c-K-i-n-n-e-y.
A. There was 17 on one reservation and another one to make it 18.
(After examining documents) No, sir, I don't see a McKinney in this reservation here. The reservations that we had booked originally by the New York office do not show a McKinney in the names.
Q. All right. You said eight rode and ten did not?
A. Yes, sir, eight rode and ten did not because we held a block booking of 18 reservations.

Mr. Hill: Just a moment, please, Your Honor (examining document).

Q. Mr. Cannedy, how soon before departure time of your [fol. 57] flight that you just referred to were those cancellations made?

A. It was some seven or eight minutes. It wasn't too long before scheduled departure.

Q. Was this time for you to notify any stand-bys?

A. We had some stand-bys which we were able to clear, yes, sir.

Q. Did those ten that you have referred to make further reservations on your airlines?

A. Yes, sir, they did.

Q. Which reservations and when were they?

A. Our records indicate that after departure of Flight 268 on Thursday, the 15th, these gentlemen requested space for Flight 954 on the morning of the 16th which was Friday, scheduled to depart Tallahassee at 8:30 a.m.

At the time that they made the request we were unable to confirm the group booking of ten and we assured them we would attempt to get the space cleared and at the same time we booked the same space for Flight 954 on the 17 which is Saturday morning as protection until we could get the space cleared for them on the flight they wanted on Saturday morning.

Q. When you say "one seven" is that airline language for the 17th?

A. Yes, sir.

[fol. 58] Q. What were the names of the passengers you booked for Flight 954 on Friday, the 16th and on the 17th?

A. Our records on a group booking of this kind, we generally as far as the records are concerned on a block booking to start with, the group as originally booked by New York was called the Alstock group and our reservations agents used the same name in our original booking for the block booking, Alstock group.

Q. Can you answer my question?

A. At a later time we changed the card then to show the names of the gentlemen that we actually had on the flight at a later time.

Q. That is 954 on the 16th?

A. 954 on the 16th and 954 on the 17th was requested on the afternoon of the 15th after the departure of Flight 268.

Q. When you say 954 you are referring to one of your flight numbers?

A. Yes, sir.

Q. Would you give me the names of those reservations, please, sir?

A. At 9:35—let me back up just a minute. At about 6:30 on the afternoon of the 15th we were able to confirm five of the original requests for ten and our agent Frizen contacted Mr. Freedman and advised him at that time that we [fol. 59] had five seats confirmed and he instructed Mr. Frizen at that time that they did not want the five seats unless they could clear all ten of them on the same flight.

We told him we felt sure that we could clear it a little bit later on if they could give us a little bit more time to work on it. At approximately 8:35 p.m. on the 15th we got the balance of the seats confirmed making a complete party of ten.

Q. Will you give me the names of those ten, please, sir?

A. Yes, sir. Our records indicate that we held at 8:35 p.m. on the 15th the reservations for M. Brown, J. Collier, I. Dresner, M. Freedman, W. Hartmine, R. Stone, A. Warner, L. Roy, A. Hardge, and A. Smith.

I might clarify one point here: That eight of this party had requested continuing space to New York, Hardge and Smith desiring to deplane in Washington but requesting space from Tallahassee to Atlanta all on the same flight preferring the same space together on a specific flight from Atlanta to New York which would stop in Washington where Hardge and Smith could deplane and the balance of the party proceed to New York.

Q. What happened to those reservations, Mr. Cannedy?

A. At 8:35 P.M. when we confirmed the space to Mr. Freedman we asked him if we could have the tickets for the group to be reissued because there was a fare differential [fol. 60] in the tickets from the space they had rebooked because their original reservations called for a tourist flight connection out of Atlanta and the flight on which they were rebooked was a first class fare flight which meant we had to collect an additional amount of money on each ticket.

We were instructed at that time that they did not want to give us their tickets at that time but would wait until the next morning.

Q. What was the date of the next morning?

A. The next morning would be the 16th.

The following morning on the 16th these reservations, all ten of them were cancelled at 0815.

Q. All right. Did you have time to notify stand-bys in that instance?

A. We had no stand-bys for that particular flight because everything had cleared up.

Q. Then on each of the flights that you have referred to this party of ten remained and you had available seating space and airlines in the air, is that correct?

A. Yes, sir. The flights on the morning of the 16th had space available for this party, yes, sir, out of Tallahassee.

Q. And the afternoon of the 15th?

A. On the afternoon of the 15th, yes, sir, space was available for this party.

[fol. 61] Q. I believe that you testified that you spoke to a spokesman named Freedman?

A. I did not converse with him. The counter agents handle most of the transactions and they did all the work.

Mr. Simon: Then I move to strike the testimony of the witness relating to his conversation with the defendant Freedman on the ground the same is hearsay.

The Court: Objection sustained.

Q. Did you see your agent discussing these reservations with any of this group?

A. Yes, sir, I did. I had occasions several times to see them discussing it across the counter at various times with various members of the group, yes, sir.

Q. In your position as station manager you were aware of what was taking place, that they were making these reservations?

A. Yes, sir, that is my responsibility.

Mr. Hill: No further questions.

Cross examination.

By Mr. Simon:

Q. Is your name Cannedy?

A. Yes, sir. C-a-n-n-e-d-y, Paul J.

Q. I understand your position is station manager here in Tallahassee?

A. Yes, sir.

Q. Where do you work?

[fol. 62] A. Tallahassee Municipal Airport, Eastern facilities.

Q. How long have you had this job?

A. I have been in Tallahassee since October, 1947. I have been station manager for Eastern in this City since June of 1948.

Q. Do you work at the Tallahassee terminal?

A. Yes, sir.

Q. Am I correct in assuming that the terminal at which you presently work is not the terminal at which you worked some months ago?

A. That's correct, yes, sir. We worked the old airport and moved this spring, that's correct.

Q. This is a new air terminal?

A. Yes, sir, that's correct.

Q. How long have you worked this new air terminal?

A. We moved in, I believe it was the 30th of March if I remember correctly. It was right in that particular period of 1961.

Q. How many days a week do you work?

A. I am scheduled to—as far as my time is concerned I am on duty 24 hours a day seven days a week. I am on duty whenever I am available. Normally I put in five to six eight to nine hour days' per week. That is my normal work schedule.

Q. This 40 to 50 hour work week is spent at the airline [fol. 63] terminal?

A. Yes, sir, in our facilities at the airport, yes, sir, that's correct.

Q. Are you familiar with the airline terminal?

A. Yes, sir.

Q. Can you, generally speaking, describe the airline terminal for the purposes of this record so that we would know what it looks like, what facilities are available for interstate passengers and so forth?

A. The terminal building itself, as you approach it from the City, faces east. As you enter the building from the east side of the terminal there are three entrances that can be used on the east side and one on the north end of the lobby space and as you enter these areas you approach either the Hertz or Avis car rental facilities and then the Eastern Airlines ticket counter facilities and then the National Airlines ticket facilities and then there is a blank counter space which was built in for future expansion.

When you enter the building that area is to the right off of the main lobby. The ticket lobby space is away from the main lobby space off to the right.

Q. At the present time there are just two airlines having space in this terminal?

A. That's correct, yes, sir.

[fol. 64] Q. That is Eastern Airlines and National Airlines?

A. That's correct.

Q. Both of these airlines are interstate carriers?

A. Yes, sir, that's correct. The main lobby then is directly ahead and to your left as you enter the main doors of the terminal building. There is considerable seating space in the main lobby area.

The dining room area is on beyond the left of that which is—it has a glass enclosure going into it.

Q. Did you say dining room area or areas?

A. Dining room areas. There is two dining room areas, two dining areas. The Savarin Restaurant area, the main dining room of the terminal, is on this area.

Q. You say the Savarin Restaurant is a glass enclosed area?

A. It controls the whole dining facilities, the whole terminal.

Q. What is the other area?

A. There is a small counter space off to the—as you go into the terminal and turn to your left it would be off to

your left. There is a small counter there that is set up for colored eating facilities.

Q. Is it so designated?

A. Yes, sir.

[fol. 65] Q. Go ahead.

A. As you enter the terminal building, on your left, before you proceed directly through the terminal to the loading finger you have telephone booths on your right as you turn left, then on your left you have your rest room facilities.

Q. How many rest room facilities are there?

A. Four. First is designated White Ladies, White Men; then as you turn around a little alcove—I don't remember the exact order but it is Colored Ladies and Colored Men on the other side.

Q. Did you also indicate that there were two waiting room areas?

A. There is, yes, sir.

Q. How are they located with regard to each other?

A. The main waiting room is as you enter directly to your left. Then the area designated as the colored waiting room is just off to the left of that as you turn to your left, it would be on your left again back by the small lunch counter.

Q. Are these facilities which you described utilized for and by the passengers of your company and National Airlines?

A. Yes, sir.

Q. Are all of these rest rooms and waiting rooms and eat facilities housed under one roof?

[fol. 66] A. Yes, sir.

Q. Would you say that they are an integral part of the air terminal itself?

A. Yes, sir.

Q. Is the ticket office opened 24 hours a day?

A. No, sir, the ticket office is not opened 24 hours a day. We maintain 24 hour coverage in our facilities but our ticket office closes at 11:45 or 11:30 p.m. after our last evening departure.

Our reservations office facilities close at that time. We maintain one man on duty in the Operations Department

basically for security reasons because we have an aircraft that remains overnight which originates for us as a flight here the next morning. To keep fire and insurance regulations valid we have to have an employee on duty around the clock.

Q. Are you open every day?

A. Seven days a week, 24 hours a day.

Q. Is the air terminal open every day?

A. Yes, sir.

Q. Are the rest room facilities available on a 24 hour basis?

A. As far as I know they are, yes, sir.

Q. Seven days a week?

A. Yes, sir.

[fol. 67] Q. How about the restaurant facilities for the interstate passengers?

A. It closes after the last departure of National's flight which is scheduled out about 11:30 at night. They close up after that time and open the next morning.

Q. At what time do they open?

A. I believe it is 7:30. I can't say for sure. I haven't paid too much attention to their opening and closing hours.

Q. Are they open every day?

A. Yes, sir, seven days a week.

Q. How about the lobby space, the waiting room space, is that available and open every day of the week?

A. Yes, sir, it is open.

Q. On the 15th and 16th days of June did you happen to be working at the terminal on those days?

A. Yes, sir.

Q. Did you notice whether or not the restaurant facilities were open or closed?

A. They were open part of the day and closed part of the day.

Q. On the 15th of June which part of the day were the restaurant facilities open and which part of the day were the restaurant facilities closed?

A. They were open in the morning as I recall and they [fol. 68] were closed about 1:00 p.m.

Q. Did they reopen?

A. On the 15th?

Q. On the 15th.
A. No, sir.
Q. Were they open on the 16th?
A. No, sir.
Q. The 16th was a Friday, was it not?
A. That's correct, a Friday.
Q. Did they open on the 17th?
A. I was out of the City on the 17th. I can't answer you.
Q. Were you at the terminal on the 18th of June?
A. No, sir. I was in the City of Tampa on the 18th.
Q. Were you at the terminal on the 19th of June?
A. Monday, yes, sir.
Q. Was the restaurant open on that date?
A. Yes, sir.
Q. Were you in the terminal on the 20th of June?
A. Yes, sir.
Q. Was the restaurant open on that date?
A. Part of the day, yes, sir.
Q. Which part of the day?
A. I think it closed about 3:00 p.m.
[fol. 69] Q. On the 21st day of June—

Mr. Hill: I object at this stage. We are getting into the areas over which the issues do not portend. The Complaints are framed around the dates of the 15th and 16th. Mr. Cannedy said he was out of the City on certain other dates. Mr. Simon is continuing on and I assume he is going to work his way up to the present.

I contend it is improper and was not brought out on direct examination relative to that. Mr. Cannedy was only directly examined relative to reservations in connection with his job as the Eastern Airlines representative. I do not know what Mr. Simon is seeking, if the Court please.

The Court: It is kind of obvious but don't you think you have carried it far enough past the 16th to establish the pattern you want to establish?

Mr. Simon: I think I have, yes, sir.

The Court: All right.

Q. Mr. Cannedy, prior to the 15th day of June wasn't it a fact that the restaurant was open every da, from 7:30 in the morning until sometime late at night?

A. To the best of my knowledge, yes, sir.

Q. With regard to these ten people who cancelled their reservations, were they in possession of airline tickets on your airline?

[fol. 70] A. Yes, sir. It was my knowledge they had tickets for the flight at 3:25 on the afternoon of the 15th.

Q. That was carrying them from points in Florida to points out of Florida, was it not?

A. Yes, sir.

Q. To your knowledge did they ever cancel their tickets?

A. They did not cancel the tickets but when they cancelled their reservations the ticket was automatically cancelled for that particular flight.

Q. Yes, sir, but they were in possession to your knowledge at all times of tickets from points in Florida to points beyond the State of Florida, were they not?

A. To the best of my knowledge they were, yes, sir.

Q. The first flight upon which they were booked out to your knowledge was Flight 268 on Thursday, June 16th at 3:45 p.m., is that correct?

A. Thursday, June 15th.

Q. I accept the correction, Thursday, June 15th.

A. 3:25, that's correct. Those reservations were booked originally by our New York office on June 9th according to the records that we have here (indicating).

Q. They were booked on a tourist flight, were they not?

[fol. 72] A. Booked first class Tallahassee, Atlanta as we have no tourist service through this City and they were connecting to a tourist section of a flight from Atlanta to New York, yes, sir.

Q. The other arrangements that were made for them were first class flights from Tallahassee to the final destination?

A. That's correct.

Q. You were not able to afford them equivalent flight service both first class and tourist as they had on other flights, were you?

A. Not at the time of the day they were requesting it. At that time, no, sir.

Q. Were you in a position during the 15th and 16th days of June to observe the conduct of the defendants?

A. Yes, sir.

Q. Can you describe how they acted?

A. We have no complaint with their actions and contact with our people. They were very polite and very co-operative asking for what they wanted and how they wanted it.

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[fol. 79] Thereupon, RAYMOND J. LEWIS, called as a witness by the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hill:

Q. State your name for the record, please, sir.

A. Raymond J. Lewis.

Q. Do you live in Tallahassee, Leon County, Florida?

A. Yes, sir.

Q. What is your business?

[fol. 80] A. Senior agent, National Airlines.

Q. Are you stationed in Tallahassee with National Airlines?

A. Yes, sir.

Q. How long have you been here as such agent?

A. Since 1948, September.

Q. How long have you worked for this airline or any other airline?

A. April of 1946, all with National.

Q. So you have been with the airlines some 15 or 16 years?

A. Yes, sir.

Q. Were you on duty with National Airlines on the 15th and 16th of June, 1961 in Tallahassee, Florida?

A. I was.

Q. Were you on duty at the Municipal Airport which is known as the Tallahassee Municipal Airport?

A. I was on duty.

Q. Is that the same airport at which Mr. Cannedy works and operates for Eastern, the gentleman who was just here testifying?

A. Yes, sir.

Q. On the 15th, Mr. Lewis, did you make a reservation for ten members or a ten member group to depart your Flight 362?

[fol. 81] A. Not on the 15th. I believe the correct date is the 16th.

Q. On the 16th? What day of the week was that? Was that Friday, Friday the 16th?

A. Friday the 16th, I believe that's correct.

Q. Do you know the names of those people who made those reservations?

A. I have my records with me.

Q. Would you tell us the names of those who reserved the flight on the 16th day of June, 1961?

A. The names I received were Dresner, Hardge, Smith, Hartmine, Roy, Stone, Collier, Brown, Werner and Freedman.

Q. Did you talk to your passenger Smith?

A. I do not know the passengers by name.

Q. Would you give us his initials if you have them?

A. I have no initials.

Q. You do not have initials for passenger Smith?

A. No.

Q. When were these reservations made, Mr. Lewis?

A. The record I have from National Airlines shows at 8:20 a.m. the morning of the 16th.

Q. Did these passengers hold tickets on your airlines?

A. They did not hold tickets on my airline.

Q. How did you then proceed to process these reserva-

[fol. 82] tions?

A. The passenger that contacted me was told that I would request the space, that it would probably be available and we would contact him or he could stop by in the next few minutes and contact us and was given until 12:00 noon on the 16th to—we would hold those reservations until 12:00 noon on the 16th for ticket reissuance and a definite confirmation on the reservation.

Q. Did you say "ticket reissuance"?

A. That's correct.

Q. What is ticket reissuance, Mr. Lewis?

A. When a passenger holds a ticket on another airline it has to be reissued for the airline on which he is traveling.

Q. In effect then, you swap the dollar value of the ticket and give the man a ticket on your line and he, then, uses your reservations and the ticket together to make the flight?

A. That's correct.

Q. What time was this flight to leave on the 16th?

A. It was scheduled to depart Tallahassee at 1:49 p.m.

Q. Were these reservations used?

A. No, they were not.

Q. What time were they cancelled?

A. Prior to 12:00 o'clock by several minutes.

[fol. 83] Q. Do you know the name of the spokesman that you were talking to?

A. I don't know his name but I would recognize him.

Q. Would you point him out to this group?

A. The gentleman sitting between these attorneys (indicating).

Mr. Simon: Let the record indicate that the witness identified Rabbi Freedman.

Q. The man you indicated, then, he was the one who cancelled as well as made the reservations?

A. That's correct.

Mr. Hill: I have no further questions.

Cross examination.

By Mr. Simon:

Q. Mr. Lewis, did you ultimately sell ten tickets to these ten people you just mentioned?

A. At a later date.

Q. What date was that?

A. It approximately could have been Saturday the 17th. I am not correct on that date. The best I can remember is the 17th, Saturday.

Q. You didn't bring these records with you?

A. No, I do not have those records with me.

Q. These ten tickets were from what point to what destination?

[fol. 84] A. From Tallahassee to New York City.

Mr. Simon: No further questions.

The Court: Any redirect?

Mr. Hill: No further questions.

The Court: May Mr. Lewis be excused from further attendance?

Mr. Simon: The defendants do not object, Your Honor.

Mr. Hill: That is all right.

The Court: You are excused from further attendance today. Thank you.

(Witness excused.)

Mr. Hill: May we have a minute or two recess? We have been going since about 9:00 o'clock.

The Court: All right. We will take one more five minute recess.

(A short recess was taken.)

The Court: Call your next witness.

Mr. Messer: If the Court please, counsel for the defense and Mr. Hill and myself representing the City conferred with the defendants Jack Poland and Hunter and we would like to move at this time to nol. pros. the cases pending against those two defendants.

The Court: That is John Jefferson Poland, Jr.?

[fol. 85] Mr. Messer: Yes, sir.

I might state for the information of the Court that they took the same action that Speed did except I believe that both of them got on the outside and possibly in the confusion they were apprehended by the officers.

The Court: All right, then the defendants Hunter and Poland, the cases are nol. pros. on motion of the City.

You are released from further custody and the charges and bonds are cancelled.

Mr. Hill: May we have them removed from the defendants' roll?

The Court: Yes.
Is the defendant Hunter in court?

(Defendant Hunter approached the bench.)

The Court: Did you understand the case is nol. pros. against you, there are no charges pending?
Defendant Hunter: Thank you, sir.
The Court: Call your next witness.

[fol. 86] Thereupon, FRANK STOUTAMIRE, called as a witness by the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Messer:

Q. Your name is Frank Stoutamire?
A. Yes, sir.
Q. Mr. Stoutamire, what official position, if any, do you occupy with the City of Tallahassee?
A. I am Chief of Police.
Q. How long have you served as Chief of Police of the City of Tallahassee?
A. Since September, '53.
Q. Were you present at the Tallahassee Municipal Airport on the evening of Thursday, June 15th?
A. I was.
Q. What time did you arrive at the Municipal Airport?
A. Possibly—I went out to the Municipal Airport on that day about 7:00 or 7:20 that morning. I made several trips out there during the day, some three or four trips out there during the day.

Mr. Simon: I cannot hear you.

A. I say I made several trips out there during the day from 7:00 o'clock to noon.
[fol. 87] Q. Mr. Stoutamire, I am referring to the night of Thursday, June 15th.
A. On the 15th?

Q. Yes, sir.

A. I went to the airbase or airport that afternoon about 3:00 o'clock.

Q. Who accompanied you?

A. You did.

Q. Did you remain at the airport until the airport was closed?

A. I did.

Q. Were there any persons or groups of persons coming onto the airport property in front of the airport terminal in automobiles?

A. There were.

Q. Do you know approximately how many?

A. I would not be able to say how many but there was a great many of them.

Q. Prior to the time that you became Chief of Police of the City of Tallahassee did you hold any position with the State of Florida or County of Leon as a law enforcement officer?

A. I served five years as Chief Deputy Sheriff of this County and I served 30 years as Sheriff of the County.

Q. You became Sheriff after being Chief Deputy?

[fol. 88] A. That's correct.

Q. Were the defendants here seated on this front row present in the air terminal building during the night of Thursday, June 15th?

A. They were.

Q. Did any persons come into the airport other than the defendants—

A. They did.

Q. (Continuing) —and excluding the law enforcement officers?

A. Yes, sir.

Q. Did you hear of any threats against the defendants by any of those persons who entered the airport building?

Mr. Simon: Objection on the ground it is hearsay, Your Honor.

Q. The defendants, I believe you stated, were present in the terminal building?

A. They were.

The Court: Objection is overruled then.

Mr. Simon: If Your Honor please, the building is a large building. I feel there may be some basis for considering the testimony of third persons if the statements are made in the presence of the defendants but there is no testimony as to that.

[fol. 89] The Court: I will hear you on that, Mr. Messer.

Mr. Messer: If the Court please, I am not asking the exact language that took place but the question was whether threats were made in the presence of the Chief of Police when the defendants were present in the lobby.

The Court: Not that they could hear but that they were there?

Mr. Messer: That they were there.

The Court: Why wouldn't that be hearsay?

Mr. Messer: I think it is part of the res gestae, that it is something that occurred in the immediate presence of the defendants.

I would like to inquire further of the witness whether or not they had an opportunity to hear it.

The Court: I think it would be admissible if they heard it. I know it would if they heard it or had an opportunity to hear it and I feel further it would be admissible if the purpose of such testimony is to establish circumstances that would tend to show the attitude, disposition or the safety or lack of safety for the visitors, the defendants.

Q. Were any statements made in your presence in the airport terminal building that caused apprehension on your part for the safety of the defendants?

Mr. Simon: Same objection, Your Honor, on the ground [fol. 90] of hearsay.

The Court: Overruled.

A. It was generally talked around the terminal that there was possibly going to be some violence if the defendants continued to stay there. I never or don't know that any one particular person told me they was going to do anything but it was generally talked around.

Q. Did you advise the defendants that the airport terminal would be closed down at approximately 11:45 p.m. on the night of June 15th?

A. I did.

Q. Did any of the defendants make any request of you in that connection?

A. J. W. Collier and Dan Speed both asked me if they would receive protection from the airbase to the City of Tallahassee.

Q. Did you tell them that they would receive that protection?

A. I told them that as far as the airport property was concerned, that I had jurisdiction there but that as I understood it I would not have jurisdiction from the airport property to the city limits but at the city limits I would have authority but that they would be protected.

They was led by one police car, one Highway Patrol car [fol. 91] and followed by a Highway Patrol car and two police cars to the City of Tallahassee and to their destination where they asked me to follow them to.

Q. When you say "Highway Patrol car" you are referring to patrol automobiles of the Department of Public Safety of the State of Florida?

A. That's right.

Q. The police cars which you referred to are police cars for the City of Tallahassee?

A. On arrival at their destination where they had asked us to take them, they asked us then if we would give them protection the next morning back to the airbase or airport. We told them that we would. One Highway Patrol car or one car belonging to the Department of Public Safety of the State and one police car followed them back to the airport. I was in the police car that followed them to the airbase.

Q. Mr. Stoutamire, the defendants had cars of their own or cars that were provided for them, is that correct?

A. I understood that they had local people's automobiles here who were taking them backwards and forward.

Q. From the requests you received from Dan Speed and Reverend J. W. Collier and from other persons other than the defendants and law enforcement officers who entered

the lobby of the terminal building and those persons who, [fol. 92] in automobiles, passed by the entrance to the terminal building, did you base on your experience as a law enforcement officer both as Sheriff of Leon County and Chief of Police have reasonable cause to believe that the continued presence of the defendants in the lobby of the airport terminal building might precipitate a riot or cause disorderly conduct?

Mr. Simon: Same objection, Your Honor. The witness is being called upon to give a conclusion.

The Court: Objection is overruled.

Mr. Simon: I would like to continue, if Your Honor please.

The Court: All right.

Mr. Simon: The conclusion is based upon hearsay; further, the question is irrelevant and immaterial unless it can be established that there was an unlawful assembly and there is nothing in the evidence or in the hypothetical question or in the question presented to this witness which indicates the existence of an unlawful assembly so even if there was an apprehension of riot his concern should be with the rioters and not the persons who were engaged in lawful assembly.

The Court: Mr. Simon, you know as well as I know that the law provides that a lawful assembly can become an unlawful assembly when certain things occur, when certain facts exist, and because of that law then his conclusion as [fol. 93] a reasonable, prudent person in the community and particularly with his vast experience make it a part of the res gestae and admissible.

The objection is overruled.

Q. Mr. Stoutamire, the question was rather long but, in effect, it was did you have reason to believe that the continued presence of the defendants at the airport building would tend to incite a riot, cause a disturbance and disorderly conduct?

Mr. Simon: Same objection based on the same grounds.

The Court: Overruled.

A. I did, based on the facts that on Thursday night, what happened there then, and what the defendants requested, that they be protected and that they had requested protection the following morning back to the airport and when I got there with the Freedom Riders they there asked if I would give them protection while they was there.

I told them that I had other matters to attend to, that I would not be able to stay there myself during the day but that I would leave police officers there for their protection and that I would be in touch with those police officers by telephone and by radio and if anything should exist, that those officers wanted me to come out there, that I would be available at any time.

I also told them that the Department of Public Safety [fol. 94] would have an automobile in that vicinity at all times for any protection that they might need.

I saw the next morning, which was on the 16th, after this instance I told you about, that I had taken them out to the base and they requested help—requested protection—I came back to town and made a trip or two out there during the morning and each time that I would make trips out there I would see cars and people in cars that I didn't see that they had anything at the airport to do unless it was for some unlawful purpose.

Mr. Messer: Your witness.

Cross examination.

By Mr. Simon:

Q. Chief, I believe that you stated that you went out to the airport on several occasions on the morning of Thursday, June 15th, the first one being at 7:00 o'clock and several times thereafter?

A. No. I thought he was talking about Friday. It seems he was speaking of Thursday. I went out there Thursday, not Thursday morning because they only arrived here about noon Thursday.

Q. Your testimony was inadvertently in error because you understood he was talking about Friday, not Thursday?

A. That's right.

Q. Can you tell us what was the first time or when was the first time that you went out to the airport?

[fol. 95] A. On Thursday?

Q. Yes, sir.

A. About 3:00 o'clock in the afternoon.

Q. Were these defendants already there?

A. They were.

Q. Did you attend a conference of any City officials or State officials with regard to the closing of the restaurant in the terminal?

A. I had nothing to do with the closing of the restaurant. I was in several meetings with some of the City Commissioners. I do not have anything to do with the closing of the restaurant.

Q. Do you know who arranged for the restaurant to be closed?

A. I do not know who made the arrangements with the restaurant operator.

Q. Do you know whether or not it was one of the City Commissioners or the City Manager?

A. Not that I personally know, no, I don't know. I was not with them when there was such a request made.

Q. You do know that such a request was made, however?

A. I understood there was but I don't know it.

Q. Your testimony was that you feel you have jurisdiction over the facilities at the airport, is that correct?

[fol. 96] A. That's right.

Q. To your knowledge, are there people stationed on duty at the airport all day and all night?

A. No, sir. I have a policeman that stays at the airport during the time that it is open. When it is closed we don't have a policeman there. They have a guard there when it closes.

I might say this: It is not in reference to a question but in many years as a law enforcement officer and seeing many instances where, in my judgment, they would be—there would possibly be a riot, it has always been my practice, it has always been my purpose to avoid it the best I could using my better judgment and my judgment has always been to move the cause and protect the cause and get them away from where I thought the violence might occur.

Q. Did you have the occasion to observe these defendants in the terminal on the times you took trips out to the terminal on Thursday and Friday?

A. I did.

Q. Would you describe what they were doing there?

A. They was sitting on seats in the waiting room.

Q. Was that the white waiting room?

A. It was. They was using the toilets and just around but as a usual thing they were sitting on seats.

[fol. 97] Q. Were they using the white toilets?

A. They were.

Q. What else were they doing?

A. Well, as I told you they was just in and around but mostly they had a regular headquarters in the waiting room.

Q. Do you know from your own knowledge whether or not these people had tickets to travel on an airliner?

A. Only that I was advised so.

Q. Do you know whether or not they were waiting to depart on an airplane?

A. It was my understanding that they had tickets to leave the airport on Friday. They cancelled, so I am told, that reservation.

Q. Were you told why they cancelled it?

A. I do not know.

Q. Do you know whether or not they had made a further reservation?

A. I understood they made reservations then for the following morning, some two or three reservations, and cancelled those.

Q. Do you know whether or not at the time of the arrest that they had a reservation to leave Tallahassee on an airplane?

A. As I understood it, they did not.

[fol. 98] Q. You don't know?

A. I don't handle the airbase. I don't handle tickets. I don't know about that.

Q. You stated that you were worried that if these people continued to stay in the airport there would be violence.

A. I came to that conclusion from the people that I saw there and things that I heard.

Q. Did you come to any conclusion as to why these particular ten people would cause other people to become violent?

A. Yes.

Q. What conclusion did you come to?

A. I came to that conclusion because of several things. I had read in the newspapers, I had heard on the radios of trouble that Freedom Riders had had in other cities and I felt that I was using that for a basis and people I seen in and around the airport and rumors that I would hear, that it was necessary that we take such steps to move the cause.

Q. You weren't concerned with whether or not these people were or were not passengers or interstate passengers on an airliner, were you?

A. I was under the understanding that they were there, had refused several reservations and that they was there creating a disturbance among the local citizens here.

I based my judgment on that and just what I would see [fol. 99] from the general public. I also thought that from what they had asked—when they asked for protection, I base that on that, too.

Q. Now, I understand from your testimony that it was the local citizens that you felt would become violent.

A. I saw citizens—I mean, I saw people both at the bus station and at the airbase that I didn't know who they was but mostly it was local citizens.

Q. Did you arrest any of them?

A. I did not.

Q. Did you arrest any of these people that you testified were milling around the air terminal?

A. I did not.

Q. Did you order them to disperse?

A. We did at the bus station. We did not—at least that was my instructions for them to do that at the bus station.

Q. Was there any violence at the bus station?

A. I am told that there were not but I was not there. I took my time surrounding the bus station in an automobile just to keep my eye on what was existing and whether there was danger or whether there was not so I would have first hand information about it.

Q. How many police are there working in the City of Tallahassee?

[fol. 100] A. I have a personnel of 75.

Q. What is the population of the City of Tallahassee?

A. A little less than 50,000.

Q. Did the Governor of this State put State Troopers at your disposal or have them available for working with you for the protection of these people?

A. I don't remember what the Governor did but I do know the State Troopers was with me.

Q. Were they acting under your command or independently of your command?

A. I might say this: That when we begin to get the publicity and hear the publicity that the Freedom Riders was coming here, in order to protect—both the Department of Public Safety and my Assistant Chief and the Captain of the Detectives Department and the Sheriff's Office of Leon County all had a meeting to determine what protection we was going to give them and it was agreed that we would all give them protection, we did not want incidents to happen in the City of Tallahassee and in the County of Leon that had happened in other towns.

Q. You therefore did make protection available to these people from any abuses or excesses by the local citizens?

A. We did and in speaking to John W. Collier after the arrest the following day he told me that—that the Police Department has certainly been nice to him and that he ap-

[fol. 101] preciated the protection that we had given them.

Q. The defendants themselves, these Freedom Riders you mentioned, you did not see them actually creating a disturbance themselves, did you?

A. I did not.

Q. I am sorry?

A. I did not.

Q. How long have you lived here in Tallahassee?

A. I was born and raised in this County.

Q. Then I won't ask you how long ago that was.

A. I don't mind telling that either. I am 70 years old.

Q. That is wonderful.

Mr. Stoutamire, can you from your experience as a public officer and as an individual who has studied people in this

area for 70 years tell us what there was in the fact that these ten people were sitting in the municipal terminal in Tallahassee that would cause people in this County and in this City to become upset and riotous and to act in an illegal and unlawful manner?

A. As I stated before the publicity that had been in the newspapers and on radios prior to them coming to Tallahassee about what had happened in other towns, the newspapers and radios that was giving the information that they [fol. 102] would be here at a certain time, people in my opinion in the City and in the County was somewhat enraged about the fact that they were coming. Therefore, for that reason I felt that it was necessary to give them proper protection because I did not want to have any instances in this City that had happened in other cities.

Mr. Simon: We have no further questions.

Redirect examination.

By Mr. Messer:

Q. Mr. Stoutamire, just to clear the record on one matter, I believe you went out to the airport the first time around 3:30 on June 15th. That was the time I accompanied you, is that correct?

A. That was the time I went—yes.

Q. Then the times you were there, several times during the morning, and, of course, you were there that night, that evening as you testified—

A. That's right.

Q. (Continuing) —then were you in the group that escorted them, the defendants, to the airport that morning?

A. I was.

Q. Mr. Stoutamire, did you have any reason or information to the effect that on the night of Friday, June 16th that there would be a very substantial group of people coming to the airport from places other than the City of Tallahassee?

Mr. Simon: I object on the grounds it is not proper re- [fol. 103] direct; it is leading and necessarily based on hearsay and a conclusion of the witness.

The Court: Objection sustained on the basis that it is not proper redirect.

Q. Did you have any reason to believe that if the defendants had been permitted to remain at the airport terminal subsequent to their arrest and I am referring particularly to the night hours that there might have been some violence?

Mr. Simon: Same objection and a further objection that this is beyond the scope of the charges that are involved here because it is referring to a time that took place beyond the hours of the arrest and it is clearly not within the scope of redirect examination.

The Court: Objection sustained.

Mr. Messer: Let me make this one point and I do it very respectfully: It is like a police officer taking a gun away from a man and somebody contending that he ought to have waited until he let the man shoot somebody with the gun.

The point I am making is that I think it is proper as part of his opinion that their presence there constituted a menace or might tend to incite a riot.

The Court: I understand the purpose of it but you explored that on direct examination and on redirect I don't think it would be proper to explore it further. For that [fol. 104] reason the objection is sustained.

Mr. Messer: I have no further questions.

Mr. Simon: Could I ask the Court to inquire of Chief Stoutamire if the witness subpoena that we have asked the police to serve has been taken care of?

The Court: Do you know yet about that?

The Witness: Maybe I can find out.

(Discussion off the record.)

Mr. Simon: Would Your Honor ask him to do that and report back to the Court?

The Court: We will do that.

Is there any reason why the Chief can't be excused from further attendance?

Mr. Simon: No, sir.

The Court: All right.

(Witness excused.)

The Court: Call your next witness.

[fol. 105] Thereupon, JAMES F. BENNETT, called as a witness by the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hill:

Q. Will you state your name for the record, please?
A. James Bennett.
Q. Are you also known as Billy Bennett?
A. Yes, sir.
Q. What is your occupation?
A. Lieutenant with the Police Department.
Q. City of Tallahassee Police Department?
A. Yes, sir.
Q. How long have you been a police officer?
A. Approximately 20 years.
Q. Was most of those 20 years in the City of Tallahassee, Florida?
A. Yes, sir.
Q. Were you on duty on the 15th and 16th days of June, 1961, Mr. Bennett?
A. I was.
Q. Will you tell us what your duties were or your assignments were on those dates?
[fol. 106] A. On Thursday the 15th around noon or a little before I was assigned or given an assignment in and around the Greyhound bus station to keep law and order and to give protection to those who might need it.
Q. Were you given specific instructions with respect to any definite group of people?
A. I was. I was instructed that there was a number of 18 Freedom Riders coming into the City by Greyhound bus arriving about 12:30 or 12:35 noon that day.
Q. In addition to those duties were you ever assigned to the Tallahassee Municipal Airport?
A. I was. I had an assignment at that same time that the information was that that special group was going to the airport and at about 1:30 I did go to the airport.
Q. What did you do and observe out there, Lieutenant Bennett?

A. I arrived there before any of this group which I had seen and recognized at sight and they came out there and entered the airport, gathered immediately in front of the ticket counter and they went in a huddle there and they would talk with the ticket agent, then they would go in a huddle themselves and talk to one another. First one would talk and then the other one and they would hold up their hands as if they were voting on some decision.

[fol. 107] They were milling—

Mr. Simon: I object and move to strike the conclusion of the witness.

The Court: The conclusion that they appeared to be voting on something?

Mr. Simon: If he saw them raise their hands—

The Court: He said as though you would vote on something. It is just a figure of speech.

Objection overruled.

A. They were milling around the airport, to the telephone, back into a huddle, talking to the ticket agent continuously time after time. Then, two and three at a time they would move from one position in the air terminal to another.

Q. What time was this?

A. This was after 1:30; from 1:30 until 5:00 I observed them in the airport building.

Q. Were you present at the time Eastern's 3:25 p.m. airplane departed?

A. I was.

Q. Did you see any of the group that you have just referred to leave on that plane?

A. Yes, sir. Eight out of this group left on that plane.

Q. Did you count them?

[fol. 108] A. Yes, sir, I did.

Q. Do you remember how many remained?

A. There were ten.

Q. What did they do then?

A. They came back in and took a seat in the lobby. Most of them were carrying baggage and they sat down close together and took a seat in a close huddle right in about the center of the lobby of the airport.

Q. If I am not mistaken your testimony is referring to the 15th day of June, that is Thursday?

A. Yes, sir.

Q. How long did you stay at the airport?

A. I stayed until 5:00 o'clock, 5:00 p.m. that afternoon.

Q. Did you have any other duties at the airport that day?

A. I did not.

Q. Did you ever go back to the airport that day or any subsequent day?

A. I was assigned—on the 16th, Friday morning, I was advised that this group was going back to the airport and I was assigned to see that they had protection from Tallahassee to the airport and while at the airport.

Q. Were you with anybody?

[fol. 109] A. I was riding in the car with Chief Stoutamire.

Q. Did you go to the airport?

A. We did. At approximately 7:00 o'clock we followed this group which were traveling in either four or five cars out to the airport.

Q. Did you speak to any members of the group at the time?

A. At arrival at the airport Chief Stoutamire stepped out of the car and talked to Dan Speed.

Q. Why did he talk to Dan Speed or do you know that?

A. Yes, sir, I heard the conversation. The Chief told Dan—

Mr. Simon: Just a moment. We object. This is not a conversation between any of the parties to this cause. Speed is not a defendant.

The Court: If the conversation was not overheard by the defendants it will be hearsay and not admissible.

Q. Lieutenant, did Dan Speed approach Chief Stoutamire in connection with the matter that they discussed or did the Chief call Dan Speed to him or do you know?

A. At that time he was approached by Dan Speed.

Q. He was approached by Dan Speed?

A. Yes, sir.

Q. Do you know Dan Speed?

[fol. 110] A. Yes, sir, I do.

Q. Did you see him in connection with this group at any time on the 15th and 16th?

A. Yes, sir. Off and on all during the day most times.

Q. Did he appear to be a part of them or acting in concert with them in any way?

A. He appeared to be part of them.

Mr. Simon: I object on the grounds it calls for a conclusion and it is immaterial and irrelevant. There is no charge against Dan Speed for acting in concert or in conspiracy.

Mr. Hill: Before you rule on that, Your Honor, I am attempting and will show this by its materiality that Dan Speed, by his conduct, was associated with this group in some way and at that time purported to act as a spokesman for them and, if so, then any statements made to him are relevant and material to this cause.

His name has been brought continuously into this record.

Mr. Simon: Not by us and I move to strike all references to his name.

Mr. Hill: It is a little late to make a motion to strike.

Mr. Simon: Regardless of whether he has been named he hasn't been made a party to this cause. No charges for [fol. 111] him are outstanding.

The Court: What was the question?

Mr. Hill: I will have to ask the Court Reporter to read that back.

(The question referred to was read back by the Reporter.)

Mr. Hill: Before you rule may I ask this witness one more question?

The Court: All right.

Q. You say you followed this group to the airport at about 7:00 o'clock on the morning of the 16th?

A. Yes, sir.

Q. Was Dan Speed driving one of the cars that was part of this group?

A. I'm not sure.

Q. Was he with part of the group?

A. I did not recognize Dan Speed until I saw him out of the car and on the ground at the airport right in front of the entrance to the airport.

Q. Did you see him with this group at the bus station the day before?

A. I did, sir.

Mr. Hill: Now, Your Honor, would the Court like to rule on the objection?

[fol. 112] Mr. Simon: All that shows is he may or may not have been a chauffeur. This doesn't mean he is an interstate passenger.

The Court: The question now before the Court is whether or not he appeared to be a part of the group or a member of the group and the objection was it calls for a conclusion of this witness.

I am going to sustain the objection.

Q. Did you see or were you present at the time that Chief Stoutamire talked to a member of this group?

A. I was.

Q. Who was he?

A. I would say at least an hour or an hour and a half after arriving and talking to Dan Speed, inside of the terminal after the flight that we had information that this group was to leave on did not go, Chief Stoutamire contacted the group for a spokesman of the group. One of the members named Collier stood up and said he was and the Chief told him he had protected them, given them protection—

Mr. Simon: I object on the grounds these are self-serving declarations. Chief Stoutamire is here, he can testify as to what he said.

It is hearsay and it is also repetitious.

The Court: Objection overruled.

[fol. 113] Q. Proceed.

A. The Chief told Collier that he had been with them for more than—from noon the day before until about approximately midnight that night and had been out that morning, followed them out that morning and he had other duties to perform in the City and that he was going back to town but that he was going to leave two officers out at the air-

port to observe and see what was going on and to keep law and order, but in that conversation Collier asked him if he was going to give them protection. The Chief told him he was going to leave the two officers out there.

Q. Did I understand you to say that one of the airline planes departed while you were there?

A. Yes, sir.

Q. Do you know which airline it was?

A. We had information it was to leave at 8:38 and believed to be Eastern Airlines.

Q. Did you see that plane leave?

A. I did.

Q. The defendants obviously did not get on it?

A. No, sir. I was on the inside of the building but I could see very easily the plane depart from the inside.

Q. Did you stay there all day or did you leave?

A. Shortly after that plane left which was 8:35 I came back to town.

[fol. 114] Q. Did you ever go back to the airport?

A. I did. About noon information was received through the Police Department and by myself and the Department decided to go out to the airport so about noon or about 12:30 Chief Stoutamire went back to the airport.

He and Mr. Messer were talking in the air terminal. Shortly after that at approximately 12:35 we made the arrest of the defendants who are here today.

Q. Were you standing there at the time he was reading this proclamation?

A. I was an arm's length away from him.

Q. Did he tell them who he was?

A. Yes, sir. Mr. Messer read from this piece of paper or proclamation and told them who he was and told them his name and who he was, that they were unlawfully assembled and asked them to disperse.

Q. How many did disperse, if any?

A. There was 13 in the group and three of them immediately dispersed as ordered by Mr. Messer.

The rest of them shuffled around just a little bit. While he was reading this proclamation they all gathered in a close huddle so they could hear. Immediately after he told them—after he finished reading it he told them he would

give them 15 seconds to disperse. They shuffled around and [fol. 115] moved around. Some of them came up nearer and sat down and some backed off. In general, it was a general shuffling of the group at that time.

Mr. Messer checked the time and longer than 15 seconds, I am sure—I would say it appeared to be a minute or two minutes—he said the time was up and ordered that all of them was arrested, arrested the group.

Q. Did they have time to comply or obey?

A. Yes, sir. They had ample time, more than time to have left the building and the premises which they were ordered to, in that length of time.

Q. All who elected to disperse did so, is that correct?

A. Yes, sir. Dan Speed was in the group. He and two boys immediately left the building and I didn't see them any more.

Q. Did you make the actual arrest of these ten people?

A. I did along with Chief Stoutamire and Mr. Messer. There was other officers in the building and they were taken into custody by, I would say, six or eight police officers.

Q. Were you present at the arrest of one Priscilla Stephens?

A. I was.

Q. Would you describe what happened there, please?

A. At the time the group was arrested they all went out of the building in a group with, I would say, six or eight [fol. 116] police officers.

I was standing near the back of the group so I followed them out and came out the door about the last one. When I got outside the officers had the police cars lined up in front of the door.

Priscilla was just ahead of the group and had not gotten in a car so she was standing right near a car. I walked up to her and asked her to get in the car. She told me she was not getting in. I opened the door and asked her to get in the car again. She started to walk away so I opened the door and took her by the arm and led her back up to the car with the door open and asked her to get in. She told me she was not getting in so I held her to keep her from either walking or running away and with the assistance of Officer Daws put her in the car.

Q. Did she make any overt act to resist you or oppose you other than what you testified to?

A. No, sir, just an attempt to walk away.

At the car, we had to use just manual force to get her in the car.

Q. What do you mean by "manual force"?

A. Had to hold her right near the seat where she could get in. She didn't make any effort at all to get in herself. She just stood with her body real stiff up against the car.

She finally sat down from outside with her feet out and [fol. 117] would not put her feet in as she was told. We had to lift her feet up and sit them around in the car.

Q. Did you notice at any time over the period that you have testified to that you were present at the airport any large crowds of people there?

A. There was. On Thursday people were gathered and were screened at the driveway to the airport by police officers.

As I left there was a group that gathered up right at the entrance that were not allowed to enter the airport terminal or the grounds.

Q. As a police officer of some 20 years experience, Mr. Bennett, did you have any feeling that there would be a breach of the peace at this time?

A. Yes, sir. I felt that without the police protection that there surely would be.

Mr. Dixon: Excuse me, Mr. Hill. What time was this, Thursday or Friday?

Q. Thursday or Friday?

A. I was describing the incident Thursday about 5:00 o'clock when I left the airport but Friday the same thing or worse—a bigger crowd had gathered on Friday. There was a bigger crowd on the grounds of the terminal and inside the building because Thursday they were screened at the driveway, at the entrance to the air terminal.

[fol. 118] Mr. Hill: You may cross examine.

Cross examination.

By Mr. Simon:

Q. Officer, where was Priscilla Stephens at the time that Mr. Messer read this proclamation?

A. She was in the group that was assembled inside the bus station.

Q. Did you see her leave?

A. I did not. The group was pretty large with the spectators and the police officers and I did not pick her out of the group as walking out but the group went out together and she was in the group.

Q. It was your testimony that she was ahead of the group?

A. I did not see her go outside. I don't believe that I said she was ahead. I don't know exactly who was ahead.

Q. When you got outside I believe your testimony was that she was already out there.

A. She was.

Q. Were you with the group or behind the group?

A. I was behind the group, just right one step behind the group as it went out the door.

Q. Then you don't know whether or not Priscilla Stephens left in obedience to Mr. Messer's suggestion or not?

A. I know she did not.

[fol. 119] Q. How do you know that?

A. Because she did not immediately leave the bus terminal—the airport terminal. The only three that immediately left was Dan Speed and two other boys and the group went out together. That is the only three that left immediately. Then there was considerable time, one or two minutes or more elapsed.

Q. Was it your testimony that you don't know whether John Poland left?

A. He did not leave immediately after Mr. Messer had ordered them to; within the period of time he gave them, neither one of them did leave.

Q. Neither one of who?

A. Poland or Stephens.

Q. But they did leave before the arrests were made?

A. They did not.

Q. It is your testimony that they were taken into custody in the terminal?

A. I carried Poland out of the building myself but the group went out ahead of me. What time he went out or where he went out—I carried Poland out of the building myself.

Q. He was behind the group then?

A. No, sir.

Q. You told me you were just walking behind the group.

[fol. 120] A. He had stopped. When I got a hold of him he was standing still about half way from where the group was seated and the front door.

Q. Then he left the group?

A. He was standing still but he wasn't out of the group because I was right at the back of the group.

Q. Do you mean he wasn't out of the terminal but he left the group?

A. No, sir, he hadn't left the group. When I got to him he was standing still and I just continued to carry him in the group so he didn't get out of the group. The group didn't leave him.

Q. The group caught up to him—

A. That's possible.

Q. (Continuing)—is that correct?

A. That's possible. I didn't see him when he stopped.

Q. It is possible that the group could have caught up to Priscilla Stephens outside of the terminal, too?

A. I am sure she did. She got out before I did and there was—we had the group put in cars and there were several put in the police cars or voluntarily went and got in themselves before she got in.

Q. Do you know Charles A. Hunter?

A. I do.

[fol. 121] Q. Did you see him leave?

A. He left in the group.

This group was so large, out of the 13 that we arrested and the police officers and the spectators until I couldn't keep my eye on any particular one. My main thought was to keep the group together as it went outside and see that they got transportation from the airport back to the city limits so I did not keep my eye on anyone from the time they were arrested until they got in the car.

Q. When you say "spectators" do you mean people in the terminal who had no business being there—

A. That's right.

Q. (Continuing) —is that correct?

A. That's right.

Q. How did you know they didn't have any business being there?

A. I didn't stop and ask them but from the group that was there they were not there for the purpose of catching a plane or getting out.

Q. That is what you surmised?

A. That's right.

Q. Did you ask any of them to leave the terminal?

A. Right at that time I did not.

Q. At any time?

[fol. 122] A. The day before, Friday, we had.

Q. The arrest was made on Friday, Officer.

A. I mean Thursday I had. At the time the arrest was made, I was only at the airport a few minutes before the arrest was made at that particular time.

Q. You were there in the morning you said.

A. Yes, sir.

Q. Were there any spectators there at that time?

A. Very few. That was—I left there soon after 8:30.

Q. Well, then, it would be your testimony that the police did not stop people who had no business at the terminal from coming onto the terminal property during the Friday morning?

A. I don't believe they did, sir.

Q. I'm sorry?

A. They did not.

Q. The police made no effort to ask these people to disperse either, did they?

A. There was two police left at the terminal but from the time that I went back out there Friday morning until I made the arrest I did not ask any of them to leave.

Q. None of the other police officers did either?

A. I don't know.

Q. As a matter of fact, at the time the arrest was made there were a large number of police officers there?

[fol. 123] A. Not a large number. There was at least six or eight.

Q. To your knowledge did any of these people ask any of the spectators to leave or disperse?

A. The two that was left out there was to observe and keep order out there and when the group went out there, when they went out there for the purpose of removing this group that was causing the trouble, that we thought would cause the trouble if we didn't do something about it—

Q. Which group caused the trouble, Officer?

A. The group that was caught—we received the most talk about and what was probably causing the trouble was the group we arrested.

Q. Do you know whether they had any airline tickets?

A. I am sure they did but I did not see them buy them or see the tickets but I am sure that they did.

Q. Can you tell me why you think they were causing trouble?

A. Their being there was the talk about town and the groups that were gathered there were talking about them and there was considerable resentment among the people.

Q. Aren't there usually people with airplane tickets at the airport terminal?

A. I am sure there are.

[fol. 124] Q. Why were these people causing trouble?

A. The fact that these people were there and the people —the publicity they got about this group that was coming to town. I don't know what caused the resentment or the groups to gather.

Q. It was the resentment that was causing the trouble, wasn't it?

A. I don't know exactly what was causing the trouble but it was the groups that were beginning to gather and there was certain talk and rumors there might be trouble if we didn't do something about it.

Q. Did you explore these rumors and this talk?

A. We did.

Q. Did you arrest any of the people who were making threats?

A. Not Friday but Thursday there was several of them questioned about it.

Q. Were there any arrests made?

A. Not to my knowledge.

Q. There weren't any arrests on Friday made of anybody that made any threats, were there?

A. I beg your pardon?

Mr. Simon: Read the question back (addressing the Reporter).

[fol. 125] (The question referred to was read back by the Reporter.)

A. There was not, to my knowledge.

Q. Did you hear any of these defendants make any threats?

A. I did not.

Q. Can you tell me in what manner they were making trouble?

A. From the Thursday that they arrived, that I received information they had arrived, we planned to give them protection and keep law and order in the City. From that moment on the crowds began to gather as though there might be trouble. The talk among the people was that there might be trouble so we were just being sure.

Q. From whom did you expect the trouble, Officer?

A. From out of this group and the people that were gathering.

Q. From the ten people?

A. Yes, sir—

Q. What kind of trouble did you expect from them?

A. (Continuing) —and their followers.

Q. What kind of trouble did you expect from these ten people?

A. We wasn't—we didn't expect any certain kind but [fol. 126] we expected there might be trouble out of them, disorderly conduct and a riot or whatever might arise.

Q. Caused by them?

A. Caused by them and their followers and the other groups that were gathering.

Q. Do you mean the spectators?

A. Yes.

Q. (Continuing) —the people that had no business in the first place, is that correct?

A. That's right.

Q. You have been a police officer in this County for about 20 years?

A. Yes, sir, approximately.

Q. Do you know of anything unusual about these ten people that would have caused resentment against them by the townspeople in this community?

A. I am not sure of what caused it but it did cause it.

Q. You don't have any idea at all?

A. No, sir.

Q. Officer, your statement is after living in this community and working as a police officer for 20 years you don't have any idea why these ten people sitting in an airport terminal should cause trouble in this community, do you?

A. I got my own ideas about what happened but I am [fol. 127] not sure what theirs were.

Q. I am asking you for your ideas, Officer.

The Court: Mr. Simon, you are on cross examination and you can lead the witness a great deal and even suggest if you like, if you were trying to get one particular answer. If you would ask him and save 30 minutes of beating around the bush the Court would appreciate it.

Mr. Simon: If I had an idea I would be pleased to help him but I assure you I do not.

The Court: You don't have any idea at all yourself?

Mr. Simon: No, sir. I don't live in this community.

The Court: Well, go ahead.

Q. Can you answer the question?

A. Give it again, please.

Q. What is your idea as to what was causing this difficulty?

A. I haven't got any idea what they thought about it, other people thought.

Mr. Simon: All right. No further questions.

Redirect examination.

By Mr. Hill:

Q. Lieutenant Bennett, could it be because of the advanced publicity and the manner in which these people [fol. 128] came to our town?

A. That is what led me to believe that there would be trouble. It is possible that is what led the rest of the people.

Mr. Dixon: I move that be stricken as completely leading and suggestive.

The Court: And repetitious. He already testified that that would have a large bearing on it.

Objection sustained.

Q. Did all of the people who could have possibly caused trouble, were they dispersed by you or by any other police officers?

A. They were.

Q. This is the only group that refused to disperse upon order by a police officer?

A. That's right.

Mr. Hill: No further questions.

Recross examination.

By Mr. Simon:

Q. Did you hear Mr. Messer read this statement to these ten people?

A. I did.

Q. Did you hear him read it to the other spectators standing there?

A. There was more than ten; there was about 16 in the [fol. 129] group that he read it to.

Q. Did you hear him read it to the other spectators?

A. No, sir, I did not.

Q. They still stayed there, didn't they?

A. Not after the arrest of this group they did not.

Q. They dispersed by themselves after this group was arrested?

A. Yes, sir.

Mr. Simon: That is all.

Mr. Hill: I have no further questions at this time.

The Court: Any reason why the Lieutenant can't be excused to go back to his duties?

Mr. Simon: No, sir.

(Witness excused.)

The Court: Do your people intend to testify?

Mr. Simon: Yes, sir.

The Court: At great length?

Mr. Simon: Well, I think that the way we have set it up there will be three people testify about the events and the others will be testifying just in terms of identification. I think that will just be corroborative and won't take very long.

I will say this: There is a large dispute as to the testimony regarding the Priscilla Stephens affair and that might [fol. 130] take a considerable length of time. We discussed that with Mr. Messer.

Thereupon, ORVILLE HOPKINS, called as a witness by the plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Messer:

Q. Your name is Orville Hopkins?

A. Yes, sir.

Q. What position do you hold with the City of Tallahassee?

A. City Manager.

Q. Were you present at the Tallahassee Municipal Airport during the afternoon of June 15th, 1961, Thursday afternoon?

A. Yes, sir, part of the time.

Q. Were you present when these defendants were at the airport?

A. Yes, sir.

Q. Did you have occasion to use one of the food vending machines?

[fol. 131] A. Yes, sir.

Q. What did you use it for?

A. I used it to purchase a sandwich and also to purchase a cold drink, I believe an orange drink.

Q. What coin did you deposit in the machine to receive the sandwich?

A. I deposited a quarter in the machine to receive the sandwich. I purchased a ham sandwich. It was made with a kind of bun affair with ham in the middle; very good.

Q. You received the sandwich?

A. Yes, sir.

Q. How much were you required to deposit in the machine or how much did you deposit in the machine to procure the cold drink?

A. 10 cents.

Mr. Messer: Your witness.

Cross examination.

By Mr. Simon:

Q. You are the City Manager of the City of Tallahassee?

A. Yes, sir.

Q. How long have you been so engaged?

A. Nine and a half years.

Q. Are part of your duties the control and operation of the Tallahassee Municipal Airport?

[fol. 132] A. Yes, sir.

Q. Were you present at the conversation between City officials and the operators of the restaurant whereby a decision was reached to close the restaurant if these Freedom Riders came out to the airport?

A. I discussed it with them, yes. I don't think we had any meeting of any kind. We discussed it back and forth, yes.

Q. Who is "we"?

A. Myself and the operators of the restaurant.
Q. Is that Mr. Isdell?
A. Yes.
Q. When did this conversation take place?

Mr. Messer: If the Court please, I am going to object to that line of cross examination. I asked Mr. Hopkins questions relating to the vending machines.

Mr. Simon: If Your Honor please, I am going to tie this in to the use of the vending machines. The reason we are contending why the price went up is because the restaurant was closed.

The Court: Nobody said the price went up but you, Mr. Simon, and Mr. Hopkins testified about the operation of two vending machines on direct examination and you know that your cross examination is limited to those things brought out on direct.

Objection is sustained.

[fol. 133] Mr. Simon: Then at this time we will ask no further questions of the City Manager and we will request the Court order he stay here so he can make himself available as a witness, an adverse witness, on behalf of the defendants at such time as we are able to present our case.

The Court: You will be around until 5:00 o'clock?

The Witness: Yes, sir. My office can contact me any time you need me.

(Witness excused.)

Mr. Hill: For the record, this is a new witness who has not been sworn and who has been outside of the courtroom and this court for the entire proceeding.

* * * * * * *

[fol. 148] Thereupon, W. D. Hopkins, called as a witness by the plaintiff, having been first duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hill:

Q. State your name for the record, please.
A. W. D. Hopkins.

Q. What is your occupation?

A. I am State Attorney, Second Judicial Circuit, State of Florida.

Q. How long have you been such State Attorney?

A. I have been State Attorney for approximately 15 years.

Q. Were you at the Tallahassee Municipal Airport on Thursday night at or about 11:00 p.m. or in that neighborhood?

A. I was.

Q. Would you tell us how you happened to be there?

A. I have a radio in my car and I got a radio call asking me to come to the airport.

Q. Who is your radio connected with, the Tallahassee Police Department or the Sheriff's Office?

A. Sheriff's Department.

Q. So then, your call emanated from some aspect of [fol. 149] the Leon County Sheriff's Department then?

A. From the jail; that is part of the Sheriff's Department, yes.

Q. Did you go to the airport at that hour?

A. I arrived there, I assume, about 10:30 to 11:00 p.m.

Q. Did you notice or find anything unusual out there, Mr. Hopkins, at that time?

A. I found an abnormally large crowd of people there upon arrival.

Q. Was the atmosphere there such as to indicate to you that there might be serious breaches of the peace, Mr. Hopkins?

Mr. Simon: I object on the grounds that this calls for a conclusion of the witness. There is no testimony showing any predicate for this type of conclusion.

Mr. Hill: If Your Honor please, I think a man of Mr. Hopkins' stature who has been the State Attorney for this Judicial Circuit as long as he has is certainly predicate enough to ask him a question as simple as that.

The Court: We have had the same argument on every witness so far.

Objection is overruled.

Q. Answer the question, please, sir.

A. I hate to ask it but will you repeat the question?

Q. I said did you find anything out there that was in [fol. 150] your opinion likely to cause serious breaches of the peace?

Mr. Simon: Same objection.

A. My answer to that is yes.

Q. Have you talked to me about this on the telephone yesterday?

A. I have talked to you about it.

Q. Would you tell this Court and this record what you told me at that time?

Mr. Simon: I object to that, Your Honor. I am not interested and this Court isn't interested in what he told Mr. Hill yesterday on the telephone.

The Court: He is interested in what you found that led you to conclude that (addressing the witness).

Mr. Simon: Could I have the question clarified for the purpose of the record? I think that is what he meant but I would like to have a proper question there.

The Court: The question is what facts and circumstances he found that caused him to conclude as he did.

Mr. Simon: If that is the question, all right.

A. Upon arrival at the airbase I found a number of people sitting inside on the benches and chairs where they normally sit. I saw a number of police officers both inside and outside of the building. I also saw some Highway Patrol officers there at the scene.

[fol. 151] I saw parked out in front some three or four automobiles containing from three to five, maybe six people. Some of their faces I recognized and some I didn't.

From talking to the people there and seeing the scene I knew that those people outside would have given trouble if the officers had not been present to take care of the situation.

Q. Mr. Hopkins, in order to clear the record when you say airbase you are referring to the vernacular in Tallahassee, that is the Tallahassee Municipal Airport?

A. That's right.

Mr. Hill: Mr. Simon, your witness.

Cross examination.

By Mr. Simon:

Q. This is what you saw Thursday night?
A. Thursday night. I was out there only on Thursday night.

Mr. Simon: No questions.
The Court: He can be excused, is that right?
Mr. Simon: Yes.

(Witness excused.)

The Court: How much do you anticipate longer this will take?
Mr. Hill: I would like to recall Mr. Messer.
Mr. Simon: You are recalling Mr. Messer?
[fol. 152] Mr. Hill: Yes, sir. May I?
Mr. Simon: No objection.
Mr. Messer: It will be very short.
The Court: Is this your last witness before resting?
Mr. Hill: Yes, sir.
The Court: Go right ahead.

Thereupon, JAMES MESSER, JR., recalled as a witness by the plaintiff, having been previously duly sworn, resumed the stand and testified further on his oath as follows:

Direct examination.

By Mr. Hill:

Q. You are Mr. James Messer, Jr. who has heretofore testified today?
A. Yes.
Q. Did you buy any food or cigarettes at the airport, at the Municipal Airport, any time Thursday or Friday?
A. I bought a package of Salem cigarettes Thursday afternoon and again on Friday morning.

Q. How much did you pay for them?

[fol. 153] A. 30 cents. I paid 25 cents, a quarter, and a nickel in the machine.

Q. On each occasion or on one occasion?

A. On each occasion.

Q. That was an automatic vending machine?

A. Yes.

Mr. Hill: Your witness.

Cross examination.

By Mr. Simon:

Q. You bought two packs of cigarettes?

A. One pack on Thursday and one pack on Friday.

Q. Then you believe that Mr. Spencer who said he only sold one pack made a mistake?

A. He must have because I got the cigarettes.

Q. Either you or Mr. Spencer is making a mistake, is that correct?

A. Evidently.

Mr. Simon: Thank you.

PLAINTIFF RESTS

Mr. Messer: If the Court please, the City will rest its case.

RENEWAL OF MOTION OF DEFENDANTS TO QUASH AND TO DISMISS THE CHARGES AND DENIAL THEREOF

Mr. Simon: At this time, if Your Honor please, the defendants will renew their motion to dismiss made before the State put on its case and at the conclusion of all the State's testimony we renew our motion on exactly the self same grounds as heretofore stated.

[fol. 154] The Court: Motion is denied.

How long do you anticipate in the presentation of your case?

Mr. Simon: About two hours.

Mr. Dixon: That all depends upon the length of cross examination by City's counsel.

Mr. Simon: That includes reasonable cross examination except, Your Honor, I will say that the single issue that remains as I regard it is the greatly disputed fact as to one of these defendants.

The Court: I had several other matters to try this afternoon.

Mr. Messer: Excuse me, Your Honor. May I interject this? I have reference to the case against Priscilla Stephens; it may be that we will have to set that for another date.

Mr. Simon: Possibly.

The Court: Well, the Court will recess now until 2:00 o'clock and, Mr. Clerk, all the cases that are previously set for this afternoon, let me check my calendar for tomorrow and see if I can try them tomorrow afternoon instead of this afternoon and I will make an announcement on that at 2:00 o'clock.

(Whereupon, at 1:00 o'clock p.m. a luncheon recess was taken until 2:10 o'clock p.m.)

[fol. 155] AFTERNOON SESSION

Mr. Simon: Your Honor, the Everett case is tied into these events somewhat. I don't think it would take very much additional testimony to present the case for or against him. We have been retained to represent him and I would appreciate it if he could be heard in conjunction with these matters.

The Court: I don't see where it has any connection with these cases at all.

Mr. Simon: He was picked up outside the bus terminal. He was taking people out there.

The Court: His case will have to be heard tomorrow at 2:00.

Mr. Messer: The City has rested its case. It is possible there may be some rebuttal testimony only as to the hour of the arrest of the defendants, that is the time.

Some of the witnesses for the City want to know if they can come into the courtroom. Do you know of any reason, Mr. Hill, why you intend to recall anybody?

Mr. Hill: Not right now.

Mr. Messer: We don't know now—

The Court: If there is any possibility that something will develop they ought to stay under the Rule.

Mr. Hill: There is that possibility.

[fol. 156] Mr. Simon: Are any of these people that are coming in going to testify?

Mr. Messer: No, none of them have testified and will not be called to testify.

The Court: The City has rested. A motion for a directed verdict has been denied.

Mr. Simon: The defense calls as its first witness Reverend J. W. Collier, Jr.

The Court: You were sworn this morning?

Defendant Collier: I was.

Thereupon, J. W. Collier, Jr., defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name and your address.

A. John W. P. as in Paul Collier, C-o-l-l-i-e-r, Jr., 310 Meeker Avenue, Newark, New Jersey.

Q. What is your occupation or profession?

[fol. 157] A. I am a minister of the gospel.

Q. What denomination?

A. African Methodist Episcopal Church.

Q. How long have you been so engaged?

A. The past 23 years.

Q. Have you had any educational training for this position?

A. I have. I completed college at Wilburforce University receiving the degree of Bachelor of Science and Social Administration. I did my graduate work at Paine Theological Seminary at Wilburforce receiving a degree of Bachelor of Divinity. I did my residence work for Master of Arts degree at Drew Theological Seminary.

Q. Do you presently hold an active pulpit?

A. I do.

Q. Where and for what church?

A. The Israel Memorial African Methodist Episcopal Church in Newark, New Jersey.

Q. On or about June 12th, 1961 did you arrange for yourself with others to become an interstate passenger in a trip that was to originate in Washington, D. C.?

A. I did.

Q. Did you embark upon this trip?

A. I did.

[fol. 158] Q. What was the date of embarkation?

A. The 13th of June which was Tuesday.

Q. 1961?

A. 1961.

Q. At that time did you have in your possession tickets on common carriers from Washington, D. C. to other destinations?

A. We did.

Q. Which tickets did you hold, on what carriers, and what was your destination?

A. Bus tickets issued by the Greyhound Bus Company from Washington, D. C. to Tallahassee, Florida.

Q. Did you also have at the time of your embarkation from Washington, D. C. in your possession or did you have arrangements to secure airline tickets from Tallahassee, Florida to other points?

A. We did. From Tallahassee, Florida back to Newark or New York, one or the other.

Q. On what airline?

A. Eastern Airline.

Q. Where was that flight to originate?

A. That flight was to originate in Tallahassee, Florida.

Q. That flight was to terminate either in Newark or [fol. 159] New York?

A. Newark or New York.

Q. Were you at the time of your embarkation in the company or presence of other persons whose destinations were the same as yours?

A. I was.

Q. Are these other persons or were there among these other persons the nine defendants who are here with you today who are designated as Freedom Riders?

A. These nine (indicating) were with us in a part of our group.

Q. Did you ultimately arrive at Tallahassee, Florida?

A. We did.

Q. In what manner of transportation did you arrive in Tallahassee, Florida?

A. We arrived by Greyhound bus.

Q. What was the date of your arrival?

A. We arrived on the morning of Thursday, June 15th.

Q. How many persons were there in your group altogether?

A. There were 18 of us in our group altogether.

Q. Did you have an express purpose in making this trip?

A. We did.

Q. What was that purpose?

[fol. 160] A. There was a two-fold purpose: First, we wanted to ascertain whether or not there were facilities available on an integrated basis to interstate passengers in waiting rooms, in rest rooms, in eating facilities in the terminals through which we would pass.

Secondly, we wanted to bear our witness as ministers, rabbis and clergymen to the struggle to obtain these rights guaranteed us by the Constitution.

Mr. Dixon: Would you talk to the Judge?

The Court: I can hear all right.

Q. Through what cities did you pass from the time that you left Washington, D. C. on June 13th until you arrived in Tallahassee, Florida on June 15th?

A. We passed through Richmond, Virginia, through Raleigh, North Carolina, through Sumpter, South Carolina, through Savannah, Georgia, through Jacksonville, Florida, through Lake City, Florida and eventually to Tallahassee.

Q. Did you test whether or not the facilities of the terminals in each of these cities were available to you and your group on an integrated basis in each of these cities?

A. We did.

Q. Was the group that left Washington, D. C. both negro and white in its composition?

A. It was so constituted.

[fol. 161] Q. Are the defendants presently before this Court both negro and white in their composition?

A. We are.

Q. What is your color?

A. Negro, negro American.

Q. Did you on Thursday, June 15th, 1961 arrange to be transported to the Tallahassee Municipal Airport in or near Tallahassee, Florida?

A. We did.

Q. About what time did you arrive at the Tallahassee Municipal Airport?

A. Approximately 1:30 in the afternoon of Thursday, the 15th.

Q. Did you at this time have in your possession an airport ticket on any carrier?

A. I did; I had an airplane ticket on Eastern Airlines to Newark, New Jersey.

Q. Did you have a reservation for a flight out?

A. I did.

Q. What time was that flight to leave?

A. That flight was to leave in the afternoon at 3:25 p.m.

Q. What was your purpose in going to the Tallahassee Municipal Airport at the time and on the date I have just indicated?

[fol. 162] A. We went to the airport in order to board the plane.

Q. Did you have any other purpose?

A. Our purpose was, inasmuch as there was time prior to the departure of the plane and since I among others had not eaten, to eat prior to leaving and to test the facilities as I indicated earlier.

Q. Did you test the facilities of the Tallahassee Municipal Airport terminal?

A. Those that were available to us.

Q. Which facilities were those?

A. The waiting room, and the rest rooms.

Q. Did you ascertain how many rest rooms were available in the terminal?

A. I did. I noticed that there were four rest rooms.

Q. How were they designated?

A. White Ladies, White Men, Colored Ladies, Colored Men or designations to that effect.

Q. Did you ascertain how many waiting rooms there were?

A. I did. There were two.

Q. Were they designated in any manner?

A. The sign pointing to the smaller was marked Colored Waiting Room.

Q. Did you ascertain whether or not there were any restaurant facilities at the terminal?

[fol. 163] A. I did.

Q. What did you ascertain?

A. That there was one large glass enclosed restaurant. Around the corner was a counter in front of which were five or six stools. On the counter was a sign "Colored."

Q. Were you able to secure any food to eat at this time?

A. I was not.

Q. Why not?

A. The restaurant door was closed and the sign on the panel next to the door marked "Closed."

Q. At the time that you arrived did you see any persons eating in the restaurant?

A. Yes. There were four or five persons eating in the restaurant when we arrived.

Q. Were these white or negro persons?

A. They were white persons.

Q. Can you describe the sign that was put on the door?

A. The sign was approximately 12, I would say, by 20 inches, a gray sign with "Colored"—I mean "Closed" marked on in black letters.

Q. Was that a printed or handwritten sign?

A. Handwritten sign.

Q. How many in your group arrived at the Tallahassee [fol. 164] Airport at the time that you indicated?

A. All of us, 18.

Q. Did any of your group leave on the Eastern Airlines Flight that you had reservations for?

A. Yes, a part of our group did; eight, in fact.

Q. What time did they leave?

A. At 3:25, the scheduled time of departure.

Q. Did the remaining ten leave at that time?

A. No. The remaining ten remained.

Q. Did you cancel your reservations?

A. We cancelled our reservations.

Q. Were arrangements made for additional reservations?

A. Reservations were made additionally at the time of the cancellation.

Q. For what time did you make reservations to leave?

A. There was a firm reservation made for Saturday morning of the 17th with a request for an earlier reservation and the assurance given that earlier reservations would be sought.

Q. You were one of the people that remained?

A. I was one of those that remained.

Q. What was your reason for cancelling your reservation?

A. In the first place, we were denied entrance into the restaurant facility. We were told by the manager that the restaurant would reopen at 4:30 and we were waiting so [fol. 165] we might be served.

Q. Did the restaurant open at 4:30?

A. The restaurant did not reopen.

Q. How long did you remain in the terminal?

A. Until approximately five minutes before midnight when we were informed that we would have to move.

Q. Did you at that time leave the terminal?

A. I did.

Q. At that time did you have reservations for flight outside the State of Florida?

A. I did, the reservation being for the next morning, Friday, the 16th, leaving at 8:38.

Q. Were these reservations for all ten persons of your group?

A. For all ten persons in the group, yes.

Q. Did you subsequently return to the Tallahassee Municipal Airport?

A. We did.

Q. When was that?

A. On Friday morning at approximately 7:25 or 7:30.

Q. What was your purpose for returning to the Tallahassee Municipal Airport on this occasion?

A. To board the plane on which we held reservations leaving at 8:38.

[fol. 166] Q. Did you have any other purpose?

A. To be served in the restaurant prior to leaving.

Q. Did you secure service from the restaurant?

A. We did not.

Q. Why not?

A. The sign still indicated that the restaurant was closed.

Q. Did you leave on the flight for which you had reservations at the time that you arrived at the airport on Friday morning?

A. I did not.

Q. Did any of your group leave on that flight?

A. None of our group left on that flight.

Q. Did you cancel your reservations?

A. We did.

Q. Did you secure new reservations?

A. We did. The reservation for Saturday morning was still available to us so we were at no time without reservations.

Q. What was your purpose in cancelling the reservation?

A. Awaiting service in the restaurant facility in accordance with the promise of the manager that it would be open.

Q. During the morning of Friday, June 17th, did you make any other reservation for a flight beyond the State of Florida?

A. You said Friday, June 17th.

[fol. 167] Q. Friday, June 16th, I mean.

A. I am not certain. I know another reservation was made. I think it was the afternoon flight.

Q. Did you subsequently cancel that flight?

A. We subsequently cancelled that flight.

Q. What was your reason for cancelling that flight?

A. Service had still been denied us in the restaurant in the airport terminal.

Q. Were you in the Tallahassee Municipal Airport terminal on the morning of Friday, June 16th, 1961 at approximately 12:00 o'clock?

A. I was.

Q. Were the other nine members of your group with you?

A. They were.

Q. During the period of time that ensued from the moment you first arrived at the airport until that time will you describe your conduct to the Court?

A. We sat in the lobby, in the waiting room; we read the newspapers; we read books which members of our party had with us and we quietly conversed among us.

Q. Were you loud, noisy or boisterous in any manner?

A. At no time in any way.

Q. Did you at any time threaten any person or persons?

A. We did not.

[fol. 168] Q. What is the profession or occupation of the remaining nine members of your group?

A. All are rabbis or clergymen; two are rabbis, eight are clergymen.

Q. Did you meet Mr. James Messer at the Tallahassee Municipal Airport on or about 12:00 or 12:30, approximately noon on Friday, July 16th, 1961?

A. I did.

Q. Did he make any statements to you?

A. He did.

Q. Do you recall, to the best of your recollection, what was the statement he made to you?

A. Yes. I jotted down the substance of the statement that he made at the time as the statement was read.

The statement said, in effect, that our presence there at the airport would tend to incite to riot on the property owned by the City. We were commanded to disperse, the alternative being arrest for unlawful assembly. We were given 15 seconds to make our decision.

Q. Did you within that period of time make a decision as to whether or not you would leave the premises?

A. I did.

Q. What was that decision?

A. To remain.

[fol. 169] Q. Did the other nine clergymen with you at this time make a decision with regard to whether or not you should leave the premises?

A. They did.

Q. What was that decision?

A. To remain.

Q. At this time and place had the terminal become filled with a number of other persons?

A. Not filled. There were a number of police officers who came in with Mr. Messer, with Mr. Stoutamire and with the Lieutenant. There were a few persons who were not police officers nor members of our group.

Q. Were there with you or seated with you at the time Mr. Messer read his announcement any other persons?

A. There were.

Q. Who were those persons?

A. Miss Priscilla Stephens, Jeff Poland, the Reverend Mr. Speed and two young men. Their last names are Steele. I am sorry, I don't remember their first names.

Those are the persons whose names I recall. There are possibly two or three others. I'm sorry, also the Reverend Mr. Hunter.

Q. Do you know whether or not they remained with your group following Mr. Messer's announcement or whether or [fol. 170] not they removed themselves from the terminal?

A. They removed themselves from the terminal.

Q. What happened to you and the other nine clergymen when you refused to relinquish your seats in the lobby of the terminal?

A. We were placed under arrest. We were told to pick up our luggage and "let's get going."

Q. Did you comply with that request?

A. We did.

Q. What happened next?

A. We went out of the front door, the entrance to the terminal, where the police cars were lined up. We were ordered to get into the police cars. We did.

Q. You were then taken to the jail?

A. Brought to the City Jail.

Q. Did you have the occasion to notice whether or not when you arrived at the Tallahassee Municipal Airport on Thursday, June 15th, there were in the terminal vending machines which dispensed food, cigarettes or Coca Colas?

A. There were two machines; one dispensing sandwiches, the other dispensing Coca Colas.

Q. Were you able to ascertain at what price?

A. I did. The prices were 25 cents and 35 cents on the sandwiches and 10 cents for Coca Colas, I believe.

[fol. 171] Q. How much for the cigarettes?

A. There was no cigarette vending machine in there at the time.

Q. Between the time that you first entered the terminal and the time that you were arrested and left was a cigarette vending machine brought to the premises?

A. The cigarette vending machine was brought to the premises.

Q. Was the price of the cigarettes announced on the cigarette vending machine?

A. Yes. There was a sign placed inside the glass reading "Cigarettes, 60 cents."

Q. Were there any changes made in the cost of sandwiches and soft drinks that were sold through the other vending machines?

A. The price of sandwiches went up to 55 cents for all of the sandwiches. There was no change in the price of the Coca Cola machine but the sign was placed on it "Plenty of cokes, ice making machine temporarily out of order."

Q. Do you recall in what manner the machines were adjusted to increase the price of the sandwiches?

A. The vending machine operator as he opened the machine manipulated the coin mechanism. What was done I don't know but there was a manipulation that was visible to me.

Q. By whom?

[fol. 172] A. By the vending machine operator or service man—

Q. Some person did this?

A. (Continuing) —that brought the machine in.

Q. When was this?

A. That was on the afternoon of Thursday.

Q. You were in the courtroom this morning when you heard the testimony of the various witnesses on behalf of the State of Florida and the City of Tallahassee?

A. I was.

Q. You have heard them on a number of occasions use the word Freedom Riders, did you not?

A. I did.

Q. Did you comprehend and understand what those words meant?

A. Yes.

Q. What did they mean?

A. A group of persons traveling on an interstate basis integrated.

Q. Do you understand that the term was properly applicable to yourself and to the nine other persons with you?

A. Yes, we were Freedom Riders.

Q. You heard the testimony also, did you not, of Mr. Paul J. Cannedy, the manager for Eastern Airlines?

A. I did.

[fol. 173] Q. Did you hear his testimony to the effect that all of the facilities of the terminal were under one roof?

A. I did.

Q. Are you able to advise us as to whether or not from your observation that testimony was correct?

A. That testimony was correct from my own observation.

Q. Did you hear him testify to the effect that the restaurant, rest rooms and lobby facilities were an integral part of the terminal and were for the purpose of serving interstate passengers on the airlines?

A. I did.

Q. From your observation of the terminal was that statement correct?

A. That statement was correct from my observation.

Mr. Simon: You may inquire, sir.

Cross examination.

By Mr. Messer:

Q. Reverend Collier, I believe that you stated that you are the pastor or minister of the Israel Methodist Episcopal Church. I didn't catch the town.

A. Israel Memorial African Methodist Episcopal Church in Newark, New Jersey.

Q. Is that a church in which the doctrines of Christianity are advocated by you as minister?

A. Very definitely.

[fol. 174] Q. I was a little confused at the term "Israel". You are a Christian minister?

A. Yes, I am. I can tell you one of the founders of our church was a man whose last name was Israel and it was named in honor of him.

Q. How long have you known the other nine defendants that elected to stay over at the Tallahassee Airport?

A. Since last Monday, since Monday, the 12th.

Q. How did you happen to meet them?

A. We met in the City of Washington, the point from which our trip started.

Q. You had never known them before?

A. I had not known them before, that's correct.

Q. Who arranged for your meeting?

A. The Congress of Racial Equality, an organization known as CORE.

Q. In effect, then, CORE or the Congress of Racial Equality arranged for this trip in which you were the leader?

A. I was one of the members.

Q. You were the spokesman for the group?

A. I was the spokesman for the group after we left—after we arrived in Tallahassee.

Q. Do you recall the time of your arrival at the Tallahassee bus station?

[fol. 175] A. We arrived in Tallahassee at the bus terminal at 12:40 p.m. on Thursday, the 15th.

Q. What did you and the members of your group do upon arrival at the Greyhound bus terminal?

A. We went into the terminal, some went into the waiting room, some went into the rest rooms, others went to the restaurant facility, that counter.

Q. I believe that you stated that you did not eat at the bus terminal?

A. I had something to eat. I had a cup of coffee. I did not have a meal.

Q. Why didn't you eat with the rest of your group?

A. All of us didn't eat. There wasn't time. We knew our flight departure was near at hand and we had to check in and confirm the flight and we wanted to have time for that.

Q. Do you know of the time that you left the bus terminal?
A. It was approximately 1:30.
Q. Then you proceeded to the Tallahassee Municipal Airport?
A. Correct.
Q. By private transportation?
A. Cars.
Q. Do you know how far the Tallahassee Municipal Air-
[fol. 176] port is located from the Greyhound bus terminal?
A. I do not.
Q. Several miles?
A. I would agree.
Q. Do you know approximately the time of your arrival at the Municipal Airport?
A. I would say between 1:45 and 2:00 o'clock.
Q. 2:00 o'clock is usually rather late for a lunch time, isn't it?
A. Not for me.
Q. It would be for those who already had lunch, wouldn't it?
A. I would not be prepared to say. It depends on how much lunch they had and what they wished.
Q. Now, do you recall the approximate hour or time of your arrest by the Police Department after I had read the proclamation or order of dispersal?
A. 12:45.
Q. 12:45?
A. Yes.
Q. Did you have a long distance telephone conversation with 15, 20 or 10 minutes prior to your arrest?
A. I did.
Q. With whom did you have that long distance conversa-
[fol. 177] tion?

Mr. Simon: Just a moment, please. Excuse me, Mr. Messer. Am I incorrect in assuming that some of the witnesses for the City are presently in the courtroom?
Mr. Messer: None that we are going to use or none that we have used.
Mr. Simon: I think the City Manager is here if I am not mistaken.

Mr. Messer: Is the City Manager in the courtroom?
Mr. Simon: I may be in error then. I am sorry.
Mr. Messer: That's all right.

Q. With whom did you have the long distance telephone conversation?
A. With Mr. Bert Marshall, the Assistant Attorney General in Washington.
Q. Did you place that call?
A. I did not.
Q. He called you?
A. He called me.
Q. How long did you talk with Mr. Marshall?
A. I would say not more than two minutes.
Q. How was that conversation terminated?
A. The conversation was terminated by me indicating—by me.
[fol. 178] Q. Was it a voluntary termination?
A. On my part?
Q. Yes.
A. Yes, it was.
Q. There was no interference on the part of anyone in connection with your termination of the call?
A. I would not have terminated the conversation had it not been for the fact that the policemen were coming in and as a member of the group and the leader of the group I wanted to be with the group.
Had it not been for their entrance I would not have terminated the conversation.
Q. As a matter of fact, you were informed that the police officers were arriving at the airport but you did not see them arrive while you were in the telephone booth?
A. I did not.
Q. A member of your group gave you the information?
A. That's correct.
Q. There was no effort on the part of anybody, whether connected with the City of Tallahassee or not, that forced the termination of that long distance conversation?
A. By a physical act?
Q. By word or act or anything.

A. The entrance of the policemen into the terminal to [fol. 179] apprehend us was the factor that caused the termination of the conversation.

Q. But you did not see the entrance of the policemen into the terminal while you were on the telephone?

A. I did not see that, no.

Q. You were informed of that—

A. Yes.

Q. (Continuing) —by one of your group?

A. One of our group.

Q. You voluntarily terminated the conversation?

A. Yes.

Q. Were you interfered with in any way, or your group, in using the seating facilities at the waiting room in the lobby there of the Municipal Airport—

A. At no time.

Q. (Continuing) —until the police officers caused your arrest on Friday morning?

A. At no time.

Q. You were not interfered with in any way with the use of the rest rooms that you chose to use?

A. We were not.

Q. Now, the facilities at the restaurant out at the airport where you described that the sign read "Closed", were there any persons admitted to the facilities while that sign was there?

[fol. 180] A. Not that I saw.

Q. Irrespective of race, whether they were white or negro?

A. Not that I saw.

Q. If there was discrimination in regard to the availability of the restaurant facilities it was discrimination against the general public, was it not?

A. I would not say when the sign distinctly said "Colored" on the little counter around the corner.

Q. Nobody used the facilities, nobody was afforded use of them, were they?

A. Nobody was there to wait on anyone.

Q. So that the whites were denied access as well as the negroes, isn't that a fact?

A. The whites in our part of the restaurant—it was closed and we were not permitted entrance.

Q. No one entered—

A. Nobody entered to my knowledge.

Q. (Continuing) —whether in your group or without your group?

A. That's correct.

Q. On Thursday night when the last plane had left and I am referring to the National Airlines flight—I believe it is National—did you make any request for police protection?

[fol. 181] A. I did.

Q. What was the reason why you made that request, Reverend Collier?

A. Mr. Stoutamire called me and told me that we would have to leave or announced that we would have to leave because the terminal was closing. He mentioned the fact there was a menacing crowd around earlier and in view of that I asked if we might have protection because of what he said was a menacing crowd gathering outside.

Q. Did you have any apprehension that you needed protection?

A. I took his word for it.

Q. You believed him?

A. I believed him.

Q. What about on Friday morning when you wanted to go back to the airport and a request for police protection was made? Did you think that was necessary?

A. No. When we arrived in town on Thursday night we told the officer what time we would be going back in town in the morning and we were told he would be there.

Q. Didn't you ask for police protection going back out?

A. I honestly don't recall that I did.

Q. Do you know whether or not anyone in your group did?

[fol. 182] A. I don't know whether anyone in the group did. I was serving as spokesman for the group and I don't recall that I did.

Q. Do I understand that your group was composed of how many rabbis?

A. Two rabbis.

Q. Two rabbis?

A. That's correct.

Q. How many Christian ministers?

A. Eight.

Q. As I understand it Christian ministers advocate the divinity of Jesus Christ?

A. That's correct.

Q. And the rabbis deny it?

A. I would prefer that they speak for themselves on their manner of religion.

Q. I think it rather strange that such opposite views, persons who had never met each other until they convened in Washington, would travel together, eat together and possibly sleep together. That is the reason I asked the question.

A. We share a common background. Christianity certainly is a development out of Judaism and we share a belief in one God Who was the Father of us all, Who made us all equal in His own image. All of us believe that in common.

[fol. 183] Q. But you don't share the common belief in the divinity of Jesus Christ?

A. Our beliefs differ at that point as our beliefs among Protestants differ at several points.

The Court: I think that is enough philosophy today so let's go ahead.

Q. None of your group have been mistreated in any way by any official connected with the City of Tallahassee, have they?

A. We were not mistreated. We were denied, however, the privilege of placing our telephone calls for six hours after we were apprehended.

Q. That is while you were being identified and fingerprinted and so forth?

A. Yes. That took no more than an hour so there were at least five hours after that.

Q. At the time that you were arrested what airline reservations did you have?

A. I believe it was Eastern Airlines. I'm not certain.

Q. What time were those reservations for? What was the flight number?

A. I don't recall the flight number.

Q. Actually, you left by National Airlines the next day, didn't you?

[fol. 184] A. It may then have been that.

Q. But you had cancelled out your National Airlines reservations that left Tallahassee on Friday, June 16th at 1:49 p.m.?

A. There had been cancellations. I don't know precisely what they were. There were different members of our party that had responsibilities and that was not mine.

Q. You were making and cancelling and making and cancelling, or your group was?

A. That's correct, or cancelling and making.

Mr. Messer: That is all.

(Witness excused.)

Thereupon, MARTIN FREEDMAN, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, sir.

A. Rabbi Martin Freedman.

Q. What is your residence?

A. 345 East 42nd Street, Paterson, New Jersey.

[fol. 185] Q. What is your profession or occupation?

A. I am a minister or a rabbi.

Q. How long have you been so engaged in this profession?

A. I was a student rabbi before my ordination for four years. I was ordained in 1955 and have been serving the congregation B'Nai Jeshrun in Paterson, New Jersey, for the past four and a half years.

Q. Are you currently the spiritual leader of that congregation at the present time?

A. Among other positions that I hold this position is the major one.

Q. What educational background or degrees do you have to equip you for this work?

A. I have a B.A. degree from Washington Square College, New York University. I have my residence requirements for a Doctorate from Columbia University. I was ordained by the Hebrew Union College, Jewish Institute of Religion, after five and a half years of study where I received my BHL degree.

Q. On Monday, June 12th, 1961 did you join a group in Washington, D. C. of which Reverend Collier who just testified was a part?

A. I did.

Q. Did you at that time possess tickets on an interstate carrier from Washington, D. C. to points beyond that?

[fol. 186] A. I did.

Q. What tickets did you hold on that occasion and what were the destinations indicated thereon?

A. I held in my possession a set of tickets on a Greyhound bus from Washington, D. C. down through the various cities in the States of Virginia, North Carolina, South Carolina, Georgia and Florida, terminating in Tallahassee, Florida.

Q. How many were in your group?

A. There were 18 members in our party including myself.

Q. Did the group have a common purpose in making this trip?

A. Yes, it did.

Q. What was that purpose?

A. The common resolve of the group was to test all facilities for interstate passengers on buses and terminals at every place along our journey and to test these facilities in terms of their integrated character.

Q. When did you arrive in Tallahassee, Florida?

A. We arrived in Tallahassee, Florida on Thursday at I believe approximately 12:40 p.m.

Q. Did you at that time have in your possession an airport ticket on an interstate air carrier from Tallahassee to points beyond the State of Florida?

A. I did.

[fol. 187] Excuse me. If you mean at the moment of arrival—

Q. Or shortly thereafter.

A. Shortly thereafter I had that in my possession.

Q. Whose ticket was that?

A. I had a ticket on an Eastern Airlines flight scheduled to leave at 3:25 p.m. that afternoon for Newark Airport via Atlanta, Georgia.

Q. What time was that flight supposed to leave?

A. At 3:25 p.m.

Q. Did you prior to that time arrive at the Tallahassee Municipal Airport?

A. Yes, I did.

Q. Did you keep the reservation on the flight you have just indicated?

A. No, I did not.

Q. Did any of your group do so?

A. Yes. Eight members of our group fulfilled the original plan and departed at 3:25 p.m. on that flight.

Q. How long did you remain in Tallahassee?

A. I remained in Tallahassee until Saturday afternoon and that date is—I have lost the track of time—June 17th at approximately 3:00 p.m.

Q. What did you do at that time?

A. At that time I boarded a National Airlines flight [fol. 188] from Tallahassee, Florida to Jacksonville, Florida with arrangements made to catch a plane in Jacksonville for Newark Airport.

Q. Were the rest of the members of your group with you on that trip?

A. They were not all of them with me. Seven other members of our group were with me at that time.

Q. The remaining two?

A. The remaining two were here in Tallahassee, Florida and remained behind.

Q. How long did you remain at the airport, at Tallahassee Municipal Airport?

A. I should say approximately—do you mean on Saturday afternoon?

Q. No. From the time that you arrived on Thursday, June 15th until Friday, June 16th.

A. We arrived at the airline terminal at approximately

1:45 p.m. Thursday and remained in the airline terminal until 11:45 on Thursday—Friday I mean.

Q. Were all of the facilities of the terminal available to you?

A. They were not.

Q. Which facilities were not available to you?

A. Insofar as I could determine the one facility which was unavailable to us was the restaurant.

[fol. 189] Q. Was that open or closed?

A. It was closed.

Q. Was it closed at all times until you left Tallahassee?

A. Yes, it was.

Q. Were you arrested on Friday, June 16th at about 12:30?

A. Yes, I was.

Q. What is your color?

A. White.

Q. Were you part of a group of people known as the Freedom Riders?

A. Yes, I was.

Q. You have heard Mr. Messer utilize that term this morning, have you not?

A. Yes, I did.

Q. Does that term have any special meaning to you?

A. Yes. I believe it is a designation applied to a group of people who travel on interstate facilities testing their integrated character.

Q. Is the application of that term to you proper?

A. I believe it is accurate and proper.

Q. You have heard the testimony given by Reverend Collier just before yours?

[fol. 190] A. Yes, I have.

Q. Did you find his testimony concerning the events that took place and what occurred to you in Tallahassee between Thursday, June 15th, and Saturday, June 17th, 1961 true and complete?

A. Yes, I did.

Q. Is there any portion of his testimony with which you differ or which you feel is necessary to add or expound upon?

A. I feel that I may be able to elaborate upon some of the travel reservation arrangements on Friday.

Mr. Simon: You may inquire.

Cross examination.

By Mr. Messer:

Q. Rabbi, you mentioned that you were the rabbi of a synagogue, I believe, in New Jersey.

A. That is in Paterson, New Jersey. I also occupy a number of other positions as well.

Q. I understood your statement to that effect. Will you state those other positions that you occupy?

A. Yes. I occupy the post of Police Chaplain for the Police Department of the City of Paterson. I am also a training officer in the Police Academy for the County of Passaic and I am associated as Chaplain to the County Jail in Passaic County.

The Court: Order in the court. I see nothing amusing [fol. 191] at all about the man stating his position.

A. I am also an instructor at Columbia University associated with the Jewish Culture Foundation in New York.

Q. Who is filling your position with your synagogue in Paterson while you are away?

A. My ordained cantor.

Q. When did you first receive instructions or requests that you join the group of so-called Freedom Riders in Washington?

A. I knew of such plans approximately four days before arriving in Washington, D. C.

Q. From whom did you receive that notice?

A. It is hard to state, Mr. Messer, because I think I was a party to the decision originally made; that is to say that a number of ministers and rabbis gathering together in the Congress of Racial Equality in New York decided upon such an interracial interfaith bus trip.

Q. Had you known Reverend Collier before that time?

A. I knew of him through his brother, Mr. Benjamin Collier, who is the director of Paterson's Human Relations

Council, a paid official of the City. I did not know him personally.

Q. You said you were a party to the decision. Who were the other parties to that decision?

A. Various members of the organization known as the Congress of Racial Equality in New York along with some [fol. 192] Protestant ministers and also with the consultative advice of various other people in the City.

Q. In other words, it was a prearranged scheduled plan?

A. Oh, yes.

Q. Did you have occasion to have lunch at the bus terminal when you arrived?

A. I don't think I would call it lunch. I had a half a glass of milk and part of a piece of pie.

Q. Nobody prevented you from having more, did they?

A. Except that the service was exceptionally slow.

Q. You all were a little bit slow in arriving, weren't you?

A. Frankly, Mr. Messer, there were only two people serving the whole of the counter at the bus terminal and it was an interminably long time before we were served.

Q. If you arrived at 12:40 and it was an interminably long time before you were served how do you account for the fact you stated you left the bus terminal at 1:30 or are you mistaken as to the time?

A. I don't think I understand your question clearly.

Q. I am not going to ask you to answer the question.

Isn't it a fact that your companions who left on the flight at 3:25 on Thursday suggested you all accompany them?

[fol. 193] A. I believe this was a matter of personal decision. As you know, as ministers and rabbis we are all of us very much occupied with our duties. It was then a question for each man to determine how pressing his duties were.

The Court: The question was did they suggest that you come along with them?

Q. There were some members of the eight who made such a suggestion.

The Witness: I am sorry. I didn't understand the question (addressing the Court).

Mr. Messer: Thank you, Rabbi. That is all.

Redirect examination.

By Mr. Simon:

Q. When you arrived at the Tallahassee Municipal Airport on Thursday, June 15th did you notice whether or not there were persons eating in the restaurant at that time?

A. Yes, I did. There were a number of people who were eating in the restaurant. I could easily determine this because one whole wall of the restaurant exposed to the interior lobby of the airport terminal is composed of glass. There were people seated at tables eating food and I did not see any waitresses serving them but it appeared to me that they were completing meals.

Q. Did you have the occasion to see whether or not there were any changes made in the vending machines at the Tallahassee Municipal terminal?

[fol. 194] A. Yes, I did.

The Court: I heard about vending machines and all of it is completely immaterial and I am going to stop any further testimony along that line. I think we covered it from both sides.

Mr. Simon: Then we will, if Your Honor please, proffer that—

The Court: That his testimony would be the same as your other witness testified to?

Mr. Simon: Yes, sir.

The Court: All right, that will save some time.

Mr. Simon: Any other questions, Mr. Messer?

Mr. Messer: No further questions.

By the Court:

Q. Is this your first venture down South?

A. No. I have been in the State of Florida many many times.

Q. Why didn't you leave when Mr. Messer read the proclamation?

A. Frankly, Your Honor, I considered it a matter of personal honor to remain where I was because I considered it my right as a citizen of this nation and this country to exercise the privileges accorded to me as a citizen and I did not feel that Mr. Messer's order directly applied to me since I at no time in my presence in the Tallahassee Air-[fol. 195] port ever engaged in any disorderly behavior or in any—

Q. So in your personal judgment you decided to stay as against the police authority that directed you to move?

A. Yes, sir.

The Court: That is all.

(Witness excused.)

Mr. Simon: Could we have the bailiff call in Mr. Isdell?

The Court: This man was not sworn and was not under the Rule but he has been in court all afternoon listening.

Do you have any objections to that?

Mr. Messer: What is his name?

The Court: Mr. Isdell.

Mr. Hill: I have no objection.

The Court: The Rule was invoked but he has been in the courtroom.

Mr. Hill: I have no objection.

Mr. Messer: What is his occupation?

Mr. Isdell: Manager of the restaurant out at the airport.

Mr. Messer: We have no objection to his testifying.

[fol. 196] Thereupon, HUBERT A. ISDELL, called as a witness by the defendants, having been first duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name and your address.

A. Hubert A. Isdell, 1918 Chowkeebin, Tallahassee.

Q. What is your occupation or profession, sir?

A. Manager of the restaurant at the Tallahassee Airport.

Q. By whom are you employed?

A. The Union News Company.

Q. How long have you been so engaged?

A. At the airport, since March 29th, 1961.

Q. Is that when the restaurant opened up in the airport?

A. Yes, sir.

Q. How many restaurants are there in the Tallahassee Municipal Airport?

A. One.

Q. Is that restaurant divided into two sections?

A. Yes, sir.

Q. Are there any designations as to one or the other [fol. 197] of those sections of the restaurant?

A. Yes, sir.

Q. What designations?

A. The lunch counter has a sign "Colored" on it which is at the colored waiting room.

Q. From March 29th to June 14th of 1961 how many days a week was this restaurant open?

A. All of it.

Q. Is your restaurant open seven days a week?

A. Yes, sir.

Q. What are the hours of this restaurant?

A. From 6:00 until 12:00, 6:00 a.m. until 12:00 midnight.

Q. Is 12:00 midnight when the terminal closes?

A. Yes, sir.

Q. Was there a change in this procedure which began on June 15th, 1961?

A. No, sir. Me and Mr. Hopkins had discussed about closing the restaurant for repairs and since the time occurred, to keep down any violence, any disturbance that may come from this that we heard about, we decided among ourselves to close the restaurant for those repairs at such time.

Q. You had two reasons then for closing the restaurant?

A. Yes, sir.

[fol. 198] Q. Who is this Mr. Hopkins that you discussed this with?

A. The City Manager.

Q. The City Manager of the City of Tallahassee?

A. That's right, sir.

Q. Did you make any repairs?

A. Yes, sir.

Q. What repairs?

A. Several repairs such as on the refrigeration, conduit, the pipe, just repairs in general.

Q. Did you complete the repairs?

The Court: Excuse me, Mr. Simon. Are you trying to impeach your own witness or what?

Mr. Simon: I am trying to get the information as to why this restaurant was closed. I am not trying to impeach him. I don't know whether the repairs were completed or not.

The Court: You asked him why he closed and he told you. Now you are pinpointing him down as though he is a hostile witness.

Mr. Simon: I don't have any reason to believe that he is a hostile witness.

The Court: Let's hurry along with it and don't pick everything to pieces all day long.

Mr. Simon: I will do my best, Your Honor.

[fol. 199] Q. Did you complete the repairs?

A. As of now I don't think all repairs are done. I mean, the only thing I can say is we closed for repairs. As such time as repairs are made or until Mr. Hopkins and myself think that it is—that no more repairs should be done, then we will open up. Until then I will remain closed.

Q. Apparently, you did complete some of the repairs because you did open on the 17th, did you not?

A. That's right.

Q. And you remained open until when?

A. Yesterday.

Q. You closed down again yesterday?

A. Yes, sir.

Q. Was that done at Mr. Hopkins' request?

A. No, sir. At both of ours.

Q. Both of your agreements?
A. Yes, sir.
Q. Did your New York office instruct you to open up this restaurant?
A. At the beginning on March 29th, 1961?
Q. No, sir. On June 15th or 16th, 1961.
A. No, sir.
Q. They did not?
A. No, sir.
[fol. 200] Q. Isn't it a fact that this restaurant was closed to avoid the necessity of serving an integrated group of Freedom Riders?
A. No, sir.

Mr. Messer: I object to that as a leading question.
The Court: Objection sustained.
Rephrase the question.

Q. Did you bring with you a copy of the lease between the City of Tallahassee and the American News Company dated October 20th, 1960 which is now in effect between the City of Tallahassee and the American News Company for the operation of the restaurants at the Tallahassee Municipal Airport?
A. I did.
Q. Is that the lease you have in your hand?
A. That is the lease.

OFFER IN EVIDENCE

Mr. Simon: If Your Honor please, we would like to introduce it into evidence as Defendants' Exhibit "1".
Mr. Messer: We have no objection.
The Court: So entered and marked.

(Lease dated 10/20/60 referred to was admitted in evidence as Defendants' Exhibit "1".)

Mr. Simon: I have a certified copy, Your Honor, which counsel may feel might be more proper to have and I would [fol. 201] like permission to substitute a certified copy by the City Auditor and Clerk for the City of Tallahassee.
The Court: All right.

Mr. Messer: Is that a photographic copy that has been certified?

Mr. Simon: We got it from the City Clerk and I believe it is a photostat of the original lease.

Mr. Messer: (After examining document) No objection.

The Court: The certified photostat will be introduced.

Q. You do not serve negroes in the white restaurant at the Tallahassee Municipal Airport, do you?

A. No, sir.

Q. Is that a policy which has been directed to you by the City or by your own company?

A. That I can't answer.

Mr. Messer: I object to that question. I think the issue is whether there was discrimination practiced on the dates of June 15th and 16th according to the testimony of the defendants.

The Court: I don't think it is a question of discrimination at any time. It is a charge of unlawful assembly here. Discrimination in bus stations and all I don't think has a [fol. 202] thing to do with it.

Go ahead.

Q. Do you know Mr. Aubrey?

A. No, sir. I know a Mr. Autrey.

Q. Do you know Mr. Autrey?

A. Yes, sir.

Q. Who is he?

A. He is southern division manager for this company, the Union News Company.

Q. Did you have any conversations with him concerning the operation of this restaurant at the terminal?

A. As division manager I called him.

Q. Did he tell you to open the restaurant or to close it?

A. Neither one. I told him I was closed for repairs, period.

Q. Your kitchen remained in operation, did it not?

A. Yes, sir.

Q. You continued to serve people who came into the kitchen?

A. No, sir.

Q. You continued to serve people who boarded planes?

A. Not the people themselves. As an agreement with the airlines as to catering, I did so, that being a different operation altogether from the operation of the restaurant.

[fol. 203] Q. Can you tell us how it was that you were able to open your restaurant during four or five days of that week and then were obliged to close it again?

Mr. Messer: If the Court please, I am going to object to this line of questioning. I think the Court very appropriately pointed out the sole issue in this case was unlawful assembly and counsel is trying to lay the predicate for a civil suit against some operator; if he is trying to do that he can do that by filing a suit. I don't see where it has any place in this court.

The Court: Objection sustained.

Mr. Simon: Read the question back (addressing the Reporter).

(The question referred to was read back by the Reporter.)

The Court: You don't have to answer that.

Q. Can you tell us how you were able to serve persons in the restaurant on Thursday, June 15th at approximately 1:30 in the afternoon although a "Closed" sign was on the door?

A. I closed the restaurant at 1:30. The people that was eating I had to let out. No one after that came in. I was closed, period.

Q. When was the next time that you opened the restaurant?

[fol. 204] A. Saturday morning.

Q. When was the next time you closed the restaurant?

A. Saturday afternoon.

Q. When did you open it again?

The Court: We are getting right back again to the cafe rigmarole. I am ruling now I don't want to hear anything else about the cafe business. I think it is pretty well established it was closed and it was opened after they left and

it was closed again, then it was opened again and I don't care about it.

Mr. Simon: We will proffer—if I can continue to examine this witness it would be clearly established that the pattern of opening and closing matched precisely the movements of these defendants in and out of the State of Florida.

The Court: That would probably be true according to how you felt on this situation.

Mr. Simon: I have no further questions of this witness.

Mr. Messer: No further questions did you say?

Mr. Simon: Of this witness.

Cross examination.

By Mr. Messer:

Q. The City of Tallahassee does not operate the restaurant at the airport, does it?

A. No.

Q. That is operated by the American News Company, is [fol. 205] that correct?

A. That's right.

Mr. Messer: That is all.

The Court: Any reason why he can't be excused?

Mr. Simon: No.

The Court: Did you bring your original copy of the lease?

The Witness: The only copy I have which is not the original.

Mr. Simon: You can have that back because we have a certified copy in evidence.

(Witness excused.)

The Court: The court will take about a two minute recess.

(A short recess was taken.)

The Court: Are all the defendants present or accounted for or are their appearances waived?

Mr. Simon: Yes, sir.

We will call Reverend Arthur Hardge.

OFFER IN EVIDENCE

At this time, if Your Honor please, I would like to offer into evidence Defendants' Exhibit "1-A" for identification which is the statement that was prepared by or for Mr. James Messer. It has previously been identified and I would like to offer it into evidence at this time.

[fol. 206] Mr. Messer: I have no objection on that going into evidence with the understanding that that was the basis for the proclamation and not the entire proclamation or order which I testified to.

The Court: We will admit it for what it contains with the understanding that your testimony elaborating on it was the full statement.

Mr. Messer: Yes.

Mr. Simon: Would you mark this, then, as Defendants' Exhibit "2" in evidence.

(Proclamation previously marked Defendants' Exhibit "1-A" for identification was admitted in evidence as Defendants' Exhibit "2".)

[fol. 207] Thereupon, ARTHUR L. HARDGE, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. What is your name, address and occupation?

A. I am Reverend Arthur L. Hardge, 315 Church Street, New Britain, Connecticut. I am a clergyman.

Q. How long have you been engaged in that profession?

A. For 16 years.

Q. Do you have any degrees from any universities?

A. Yes, I do. I have a Bachelor of Arts degree from Morgan State College, Baltimore, Maryland.

Q. Have you had any special training for the profession of clergyman?

A. Yes, I have. I studied at the Temple University School of Theology and I have also taken extension courses at Union Theological Seminary.

Q. What is your denomination?

A. African Methodist Episcopal Zion.

Q. What is your color?

A. I am a negro.

[fol. 208] Q. Did you hear the testimony of the other witnesses regarding the trip of the Freedom Riders?

A. Yes, I did.

Q. Were you a part of that group?

A. Yes, I was.

Q. Were you in the terminal at the Tallahassee Municipal Airport from approximately 1:00 o'clock or 2:00 o'clock on Thursday, June 15th to Friday, June 16th when you were arrested?

A. Yes, I was.

Q. By the way, did you have during this period the opportunity of observing the restaurant, the white restaurant in the terminal?

A. Yes, I did.

Q. Was that closed all during that period?

A. Yes, it was.

Q. Did you see any repairs being conducted in the restaurant during that period?

A. No, sir, I did not.

Mr. Simon: Will you mark this as Defendants' Exhibit "2-A" for identification.

(Roll of film referred to was marked Defendants' Exhibit "2-A" for identification.)

The Court: For the record what is that?

[fol. 209] Mr. Simon: That is, Your Honor, a film of the incidents that occurred at the Tallahassee Municipal Airport on Thursday, June 15th, 1961 at approximately 1:45 p.m.

Mr. Messer: May I ask—apparently, counsel is testifying.

The Court: I was asking him to identify an object that he was placing into evidence for the purposes of identification.

You say around 1:45?

Mr. Simon: Shortly after these people arrived at the terminal.

The Court: On the 15th or the 16th?

Mr. Simon: The 15th of June, 1961.

The Court: You may mark it for identification purposes.

Q. Reverend Hardge, I show you Defendants' Exhibit "2-A" for identification and ask you if you have had the occasion to view that film?

A. Yes, I have.

Q. Is that film a true, correct and accurate portrayal of the events that occurred at the Tallahassee Municipal Airport on Thursday, June 15th, 1961?

A. Yes, it is.

Q. At a time you and the nine other Freedom Riders [fol. 210] arrived at the airport?

A. Yes. I might say that there were several films I viewed. Some were on the 15th and if this is one of those, it is. Others were on the following day.

Mr. Simon: If Your Honor please, I would like to introduce this into evidence and we are prepared to exhibit it to the Court if the Court wants to see it at this time or the Court can view it at a subsequent time.

We offer it into evidence as Defendants' Exhibit "3".

Mr. Messer: If the Court please, before the Court rules on the admissibility of it I would like to cross examine the witness in regard to the film.

The Court: You may question the witness now for the purpose of objecting to the admission into evidence of the film.

Mr. Messer: Did you take the pictures that are supposed to be shown on that film?

The Witness: I didn't get your question.

Mr. Messer: Did you take any moving pictures out at the airport?

The Witness: I took pictures out at the airport but these are not my films.

Mr. Messer: Those are not your film?

The Witness: No, sir.

[fol. 211] Mr. Messer: Who took those pictures?

The Witness: I don't know, sir.

Mr. Messer: How did you come into possession of them?

The Witness: There were shown to me by my attorney, Mr. Dixon.

Mr. Messer: If the Court please, I am going to object to the admissibility in evidence of the films. He didn't take them.

Mr. Simon: Counsel, obviously—

Mr. Messer: They could have been edited, they could have been cut, there could have been omissions.

The Court: What purpose would be served by showing a film taken on the 15th when the arrest was made on the 16th around 12:45?

Mr. Simon: The purpose in this particular instance is to show that the restaurant was closed, that there was a small hand printed sign marked "Closed" and that the restaurant contained a number of people in the restaurant who were eating.

It also shows the condition of the terminal at that time, that there were few people gathered and no crowds.

The Court: I think we have had about six or seven hours of testimony on the same thing and I believe it so why look at it?

[fol. 212] Mr. Simon: Does Your Honor—

OFFERS IN EVIDENCE AND REFUSAL THEREOF

The Court: I am not going to admit it into evidence.

Mr. Simon: We will proffer it into evidence, if Your Honor please.

The Court: All right. It is refused.

Mr. Simon: Would you have this one marked as Defendants' Exhibit "3-A" for identification.

(Roll of film referred to was marked Defendants' Exhibit "3-A" for identification.)

Q. Reverend Hardge, I show you Defendants' Exhibit "3-A" for identification and I ask you if you have had the occasion to view this film.

A. Yes, sir, I have.

Q. Can you tell me whether or not it represents a true, correct and accurate portrayal of the events which took place—

A. Yes, sir.

Q. (Continuing) —at the Tallahassee Municipal Airport on Friday, June 16th, 1961 at approximately 12:00 or 12:30 p.m. at a time when Mr. Messer was reading his proclamation to you and the other nine Freedom Riders?

A. Yes, sir.

Mr. Simon: We offer this into evidence as Defendants' [fol. 213] Exhibit "3".

Mr. Messer: I would like for you to look at these films and tell me which one was taken on Thursday and which one on Friday.

The Witness: I cannot do that. As I said, I saw several rolls and some of them were taken on the 15th, Thursday, and others were taken on the 16th. All of them were taken during the time we were at the Municipal Airport.

Mr. Messer: In other words, you don't know what is on these films here, you can't swear under oath?

The Witness: I know what is on there. It is an accurate picture of what took place on the 15th and 16th at the Municipal Airport.

Mr. Messer: You don't know which film contains each incident?

The Witness: I don't think anyone could tell you that, sir, just seeing a blank roll of film.

The Court: The question is can you under oath now testify within a degree of certainty which reel of those films depicts the 15th and the 16th? If you don't know, it is all right to say so.

The Witness: I know it is all right to say so but I am looking at a blank reel which designates nothing to me.

The Court: You just testified, Preacher, by Mr. Simon [fol. 214] that this film here depicted what happened on the 16th and yet you put the two together and you don't know whether it is the 15th or 16th.

The Witness: I also mentioned before I saw several reels of film, some taken on the 15th and some on the 16th.

Mr. Messer: I am going to object to the introduction into evidence on the same grounds as before. If he is attempting to disclose the fact that the restaurant was closed at the time of the defendants' arrival at the airport and was closed the next day, that has been established by several witnesses. We admit it.

Mr. Simon: I haven't also indicated what is on this second film but I would like to explain to the Court that I am interested in saving the time of this Court. I can take the camera which is here (indicating) and the projection screen which is here and I can run these films and proffer them that way. I am trying to save the time of this Court.

Mr. Messer knows very well you can't pick up a blank reel and see what is on it. This witness and I have gone through these things and he has seen them and we have marked each one, each reel as 1, 2, 3 and 4.

The Court: You pick one up and ask him if the film on here depicts what happened on the 16th, if it was a true reproduction of it and he said, "Yes."

[fol. 215] Mr. Simon: Because he knows the first film shows the events of the 15th and the second film I was going to ask him about shows the events of the 16th.

I would like permission of the Court to get a movie camera and show them to the Court so that this witness can testify from his own direct knowledge.

The Court: Hold on a minute. What is the purpose of showing the film?

Mr. Simon: The purpose of showing the second reel which is Defendants' Exhibit "3-A" for identification is to show that when—it is a pictorial representation of the entire terminal at the time when Mr. Messer was reading from the second exhibit, the proclamation so-called, and it shows the exact condition of the terminal, it shows the number of people that were there in all parts of the terminal at that particular time and there weren't that many to speak of, maybe four or five police officers at the terminal.

Mr. Messer: One of the bases of objection is somebody had to develop those films and edit those films and they could have been deleted and parts added. I want the person who took the pictures to identify them.

The Court: Do the pictures reflect the surrounding area

leading to and from the airport and a time marked on the film as to the exact moment it was taken?

[fol. 216] Mr. Simon: Yes, sir. As a matter of fact, in this film or in some of the films it shows the clocks and in this particular one the time has been already identified because we see Mr. Messer reading the statement.

The Court: I think it would be interesting but I cannot admit it into evidence until the person who took the pictures and developed the pictures can come forth and testify that they are in full as taken.

Mr. Simon: We proffer this as a true and correct and exact portrayal of the events that occurred in the terminal at the time that Mr. Messer was reading his proclamation.

The Court: I cannot admit it into evidence on a proffer. A predicate must be laid first.

Mr. Simon: Would you mark this as Defendants' Exhibit "4-A" for identification.

(Roll of film referred to was marked Defendants' Exhibit "4-A" for identification.)

By Mr. Simon:

Q. I show you Defendants' Exhibit "4-A" for identification, Reel Number 3, and I ask you if you have had the occasion to view this film.

A. Yes, sir.

Q. Is this a true—

Mr. Messer: If the Court please, let the witness answer what it portrays rather than having a leading question.

[fol. 217] The Court: I think the objection is well taken.

Q. Do you recall what this portrays?

A. I can tell you what is on just about each one but what is on each specific one I don't think I could.

Mr. Simon: If Your Honor please, I am going to ask to have the film shown. I am going to ask permission of the Court to show this film to the witness.

The Court: I am not going to allow them to be shown until the person who took them and developed them and had custody of them up until this time has been here and laid the proper predicate.

Mr. Simon: Then I will proffer this Reel Number 3, Defendants' Exhibit "4-A" for identification, into evidence as a true and correct portrayal of the vending machines located in the Tallahassee Municipal Airport showing the sign on the cigarette machine in handwriting "Cigarettes, 60 cents per pack."

Mr. Messer: I submit that is immaterial. As I see it the only issue is whether or not it is a case of unlawful assembly.

The Court: They are not admitted into evidence.

Mr. Simon: Here is Reel Number 4. Mark this as Defendants' Exhibit "5-A" for identification.

(Reel Number 4 referred to was marked Defendants' Exhibit "5-A" for identification.)

[fol. 218] Q. Reverend Hardge, I show you Defendants' Exhibit "5-A" for identification and I ask you if you have had the occasion to view same.

A. Yes, sir.

Q. Is this a true and accurate portrayal of the arrest of Priscilla Stephens on Friday, June 16th, 1961 at about 12:30 or 1:00 o'clock in the afternoon?

A. Yes, sir.

Mr. Simon: If Your Honor please, I would like to have this introduced into evidence as Defendants' Exhibit Number "3".

The Court: Same objection?

Mr. Messer: Same objection.

The Court: Same proffer?

Mr. Simon: Same proffer.

The Court: Same ruling.

Mr. Simon: We will proffer in this instance of this film that this shows the arrest of Priscilla Stephens, shows her being placed in handcuffs and shows at no time did she struggle or resist arrest of the police.

I have no further questions of this witness.

Cross examination.

By Mr. Messer:

Q. As I understand it you are a Christian minister and not a rabbi?

[fol. 219] A. Yes, sir.

Mr. Messer: That is all.

(Witness excused.)

Mr. Simon: We will now call Reverend Robert Brown.

Thereupon. ROBERT MCAFEE BROWN, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name.

A. Robert McAfee Brown.

Q. Your address and occupation?

A. My address is 606 West 122nd Street, New York City 27, New York. I am an ordained Presbyterian minister teaching theology at Union Theological Seminary in New York City.

Q. Do you hold any degrees?

A. I have a B.A. degree from Amherst College; a B.D. degree from Union Seminary; a PhD. degree from Columbia University and a Honorary D.D. degree from Amherst College.

Q. Are you the author of any books?

[fol. 220] A. I am.

Q. Which ones?

A. I am the author of The Spirit of Protestantism; I am co-author with a Roman Catholic and a Jesuit on a book of Protestant Catholic relations called an American Dialogue; I am the translator of a book from the French by Dietrich called God's Unfolding Purpose; I am the author of a book called The Significance Of The Church and a book

called The Bible Speaks To You and a book entitled T.P. Forsythe: Prophet For Today.

Q. How long have you been active in your profession?

A. I was ordained to the Christian ministry in April of 1945.

Q. Have you been a practicing minister since that time?

A. I served as a Navy Chaplain, served in a church, have taught on two college campuses and am now teaching in a theological seminary.

Q. Did you become one of the Freedom Riders in Washington, D. C. on June 12th, 1961?

A. I did.

Q. Did you remain with this group until following your arrest and the arrest of the others in the group on Friday, June 16th, 1961?

A. Yes, sir, with the exception of the fact that I was not [fol. 221] present on the journey from Washington to Raleigh, North Carolina. I already had a speaking engagement before the New York State Synod. I flew up to fulfill that commitment and then caught a plane from Syracuse and met the group at Raleigh. I was with the group for the rest of the trip.

Q. Did you share the experiences which have been related by the prior witnesses?

A. Yes, with the exception of anything between Washington and Raleigh.

Q. If we were to examine you on the events of those days would your testimony be corroborative of the testimony of the others in your group?

A. It would.

Q. Were you able to observe the restaurant in the Tallahassee Municipal Airport on Friday, June 16th and Thursday, June 15th, 1961?

A. I was able to.

Q. What was its condition? Was it open or closed?

A. The door was locked and there was a hand printed cardboard sign saying "Closed."

Q. Did you see any repairs being done?

A. I saw no repairs being done.

Mr. Simon: We submit him for cross examination.

[fol. 222] Cross examination.

By Mr. Messer:

Q. Did you go in the kitchen of the restaurant?
A. No, sir.
Q. In other words, you could not tell whether there were repairs being made or not?
A. No, sir. I could not see in the kitchen.

Mr. Messer: No further questions.
The Court: Have you ever been anything other than a Presbyterian?
The Witness: No, sir.
The Court: I have no other questions.
Mr. Simon: If Your Honor please, may I recall Reverend Brown for just one question?
The Court: All right.
Mr. Simon: What is your color?
Defendant Brown: White.
Mr. Simon: That is all.

[fol. 223] Thereupon, ARTHUR L. HARDGE, having been previously duly sworn, resumed the stand and testified further on his oath as follows:

Cross examination (Continued).

By Mr. Messer:

Q. Did you make any long distance calls from the Tallahassee Municipal Airport?
A. Yes, sir.
Q. Did you talk to your wife?
A. I am trying to think when I called. I called my wife.
Q. Did you tell her that you were not coming home because you hadn't been arrested as yet?
A. No, sir.
Q. Did you make a statement to her that you had not been arrested yet?

Mr. Simon: If Your Honor please, I object as to what this man may have said to his wife. It is privileged under any circumstances.

I have reason to believe how Mr. Messner got some of these statements and I don't think that we ought to go into that but certainly this communication is privileged.

The Court: It is not necessarily privileged but it is not proper cross examination because no reference was made [fol. 224] on direct examination.

Objection sustained on that basis.

Mr. Messer: No further questions.

Thereupon, RALPH LORD ROY, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, address and occupation.

A. Ralph Lord Roy, 448 Central Park West, New York 25; a clergyman.

Q. What denomination?

A. I am pastor of the English speaking congregation of Grace Methodist Church, New York City.

Q. How long have you been a clergyman?

A. Since 1952.

Q. Do you hold any degrees?

A. Yes. I have a B.A. from Swarthmore College in Pennsylvania. I studied theology at Union and I have a [fol. 225] M.A. from Columbia and Union. I have completed residence for a PhD. from Columbia.

Q. Do you presently hold an active pulpit?

A. Yes. I am pastor of the English speaking congregation of Grace Methodist Church.

Q. Are you the author of any books?

A. Yes. I am the author of Apostles of Discord published in 1953 and Communism and the Churches published in 1960.

Q. Did you become one of this group of Freedom Riders in Washington, D. C. on June 12th, 1961 and did you remain with this group through the arrest of the group on Friday, June 16, 1961?

A. Yes, I did.

Q. Did you share all of the experiences that have been related by the previous witnesses who have testified?

A. Yes, I did.

Q. You heard that testimony have you not?

A. Yes, I have.

Q. If we were to inquire of you in the same vein as we inquired of them would your testimony be anything other than corroborative of what has already been said?

A. No, it would not.

Q. Now, then, sir, were you a witness to the arrest of Priscilla Stephens?

[fol. 226] A. No, I was not. I saw her after she was arrested.

Mr. Simon: You may inquire.

Cross examination.

By Mr. Hill:

Q. Were you a member of the group that formulated the plans to make this prearranged trip?

A. No, I was not.

Q. Are you a member of the Congress of Racial Equality?

A. No, I am not.

Q. How many members of this group, and there are nine others, did you personally know prior to this occasion?

A. I knew four members of this group personally.

Q. Do they live in your town or near you?

A. They live in the New York City area. A couple of them live fairly near.

Q. But the others were total strangers to you?

A. Yes, except I knew two or three of them by name, not total strangers. One of them is a rabbi where my brother happens to live.

Mr. Hill: No further questions.

(Witness excused.)

[fol. 227] Thereupon, ISRAEL DRESNER, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. State your name, address and occupation.

A. Israel S. Dresner, 78 South Springfield Avenue, Springfield, New Jersey. I am a rabbi.

Q. How long have you been engaged in that occupation?

A. I have served for the last three years as the rabbi of Temple Share Sholom in Springfield, New Jersey.

Q. What is your educational background and do you hold any degrees?

A. Yes. I am a graduate of the University of Chicago. I also have a M.A. from the University of Chicago. I have a BHL and an MHL from the Hebrew University College, Jewish Institute of Religion at which institution I was also ordained a rabbi.

I have also completed my work for a Doctorate at the University of Chicago except for—I do not have my Doctorate as yet but I hope to have it within the year.

Q. What is your color, please?

A. White.

[fol. 228] Q. Did you become one of these Freedom Riders in Washington, D. C. on June 12th, 1961?

A. I did.

Q. Did you journey with this group from Washington, D. C. to Tallassee, Florida and share the experiences with them that have heretofore been related by the other witnesses?

A. I did.

Q. If I were to inquire of you in the same manner as I have inquired of previous witnesses would your testimony be other than corroborative of the events that took place up to and including the arrest?

A. It would be corroborative of what was described.

Mr. Simon: We submit this witness for cross examination.

Mr. Messer: No questions.

By Mr. Simon:

Q. Did you see the arrest of Priscilla Stephens?
A. Unfortunately not.

Mr. Simon: You may inquire.
Mr. Messer: No questions.

By the Court:

Q. Who buys the train tickets and bus tickets and give you travel expenses on these freedom rides?
A. Part of it, of my expense, was laid out by myself and my congregation through its social action committee is in [fol. 229] the process of trying to raise the remainder of the funds for me.
Q. Is CORE financing any portion of it other than counsel?
A. Yes. CORE has but CORE will be reimbursed by the social action committee of my congregation.

The Court: All right. That's all.

Cross examination.

By Mr. Messer:

Q. As I understand it, the purpose of your trip from Washington to Tallahassee was to test the interstate facilities and so forth with reference to whether or not they were segregated or integrated. Is that correct?
A. That is certainly one of the major functions of our trip.
Q. What was the other function? What other functions were there?
A. I believe that all of us as servants of God wish to identify ourselves with those who are seeking freedom and equal rights in our country.
Q. It was the same thing, I mean it was to test out whether the facilities of interstate commerce were integrated or segregated? You tested those out on the bus and the test was satisfactory to you, is that right?
A. I didn't know what happened before Tallahassee was of interest to this Court.

[fol. 230] The Witness: If Your Honor wishes—
The Court: No.

Q. What I am talking about is when you arrived at the Tallahassee bus station did you seek food there?
A. We did.
Q. Were you served?
A. I was.
Q. You went out to the airport and you found the restaurant closed?
A. That's correct.
Q. Hadn't you completed your test then if the restaurant was closed?
A. In the opinion of the group which remained the airport terminal was a facility in interstate commerce and we were interstate passengers and we wished to be served at that facility.
All I wanted was a cup of coffee, frankly, and had I been served a cup of coffee I am quite certain I would have left very quickly.
Q. But it was closed to everybody, no person was admitted?
A. It was closed to our group.
Q. Your group and did you see anybody else enter?
A. There were people in the restaurant.
Q. I said enter while you were there.
[fol. 231] A. I did not.

Mr. Messer: That is all.

(Witness excused.)

Mr. Simon: Counsel for the City has agreed to stipulate that Reverend Ralph L. Roy is white.

Thereupon, AUSTIN M. WARNER, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, your address and your occupation.

A. Austin McRaven Warner. My address is 468 Riverside Drive, New York City. My occupation is minister.

Q. What is the denomination?

A. Disciples of Christ.

Q. Is that a protestant denomination?

A. Yes, sir.

Q. How long have you been engaged in this occupation?

A. I have been ordained since 1950.

[fol. 232] Q. Do you hold an active pulpit at this time?

A. No, I do not.

Q. How are you employed at this time?

A. I am Executive Secretary of the Manhattan Division of the Protestant Council of the City of New York.

Q. Do you have any degrees from any colleges and universities?

A. Yes, I do.

Q. Which ones?

A. I have a Bachelor of Music degree from the American Conservatory of Music in Chicago; a Bachelor of Arts degree from the Texas Christian University in Fort Worth, Texas; a Bachelor of Divinity degree from Brite College of the Bible at Texas Christian University and a Master of Theology degree from Union Theological Seminary, New York City.

Q. Did you join this group of Freedom Riders in Washington, D. C. on June 12th, 1961?

A. Yes, I did.

Q. Did you journey to Tallahassee with them?

A. Yes, I did.

Q. Did you go along with them to the Tallahassee Municipal Airport on the 15th of June and remain there through the 16th of June when you were arrested?

A. Yes, I did.

[fol. 233] Q. If we were to inquire in detail as to the circumstances of those days would your testimony merely be corroborative of what had gone on before?

A. It would.

Q. What is your color?

A. White.

Mr. Simon: I have no further questions.

Cross examination.

By Mr. Hill:

Q. Were you in on the formative stages of this program?

A. I was called by a representative of CORE on Wednesday evening, that would be the 7th of June, and asked if I could help form this group.

Q. I asked you if you were in on the formative stages. You answered as though you came in after it was decided that you would do it. Am I correct?

A. The decision to form a group of this nature was made before I was called.

Q. Did you know any of these people who made the decision to form this group?

A. Yes, I did.

Q. How many of them?

A. (No response.)

Q. Let me ask you this: How many of these other nine [fol. 234] are you personally acquainted with?

A. Four.

Q. The other are strangers to you then?

A. Yes.

Q. Are you a member of the Congress of Racial Equality?

A. No, I am not.

Q. Are they furnishing you money and other expenses for this trip?

A. I am paying all I can. That which I cannot pay is being paid by the Congress of Racial Equality.

Q. At the time of your finding the restaurant facility closed there you did not consider that that was a sufficient test?

A. No, I did not.
Q. You did not?
A. No.
Q. What did you propose to do?
A. To remain there without eating until the restaurant was opened so we could eat.
Q. Suppose it had remained closed for a great long period of time. Would that have made any difference?
A. Our plans had only been made for the immediate future. What we would have done after several days I do not know.

Mr. Hill: I have no further questions.

[fol. 235] By the Court:

Q. What, in your opinion, is the primary purpose of a member of the ministry? What is his primary purpose in life, a preacher following his profession?
A. His primary purpose in life is to witness to the gospel of Christ in both word and deed.
Q. And thereby save people's souls and make Christians out of them, is that right? Isn't that the ultimate purpose of the preacher?
A. That is true.

The Court: Thank you.

Redirect examination.

By Mr. Simon:

Q. Just a moment. Reverend, if you feel that the question and answer between yourself and the Court is not complete or could in some sense not be leading or expressive of your own views, you have a perfect right as a witness in a courtroom to explain your answer.

The Court: He explained it to my satisfaction and that is enough and he knows it.

Mr. Simon: Then I will respectfully, if Your Honor please, proffer into the record any further statement which he feels is necessary to clear up any misunderstanding that his answer may have created. I don't know whether it

has or not but the witness clearly appeared to me to feel, or appear to show he was dissatisfied with the effect that his answer created.

[fol. 236] The Court: All I asked him was "Is that the primary purpose" and he said, "Yes." I see no further reason for discussion on it.

Mr. Simon: I would then proffer into the record any further statement he would want to make to clear up any misunderstanding which may or may not exist.

The Court: The question was asked and the answer has been given and that is adequate.

That is all.

Mr. Simon: Your Honor, I respectfully submit to the Court that as an attorney we have the right to proffer into the record. The Court doesn't have to accept it as evidence but we have the right to proffer at this time or at the close of the proceedings any matters which counsel feel are relevant and material to the cause. Certainly the purpose of clarifying answers is relevant and material.

The Court asked the question. I feel that both question and answer are relevant or else the question wouldn't have been asked.

The Court: An answer was given and, Mr. Simon, this Court enjoys the position a little bit better than a lawyer today because it is I who makes the decision and not the lawyer.

That is all.

Have a seat (addressing the witness).

[fol. 237] (Witness excused.)

Mr. Simon: We respectfully take exception to the action of the Court.

The Court: I gather that.

Mr. Simon: We will now call as our next witness Reverend Robert Stone.

Mr. Messer: If the Court please may I inquire of counsel for the defense if this is corroborative evidence? We are perfectly willing to stipulate that the testimony of the other defendants with regard to their journey down here, the events that took place at the airport, that their testimony would be the same.

I am trying to shorten this and save time, Mr. Simon.

Mr. Simon: I have been checking it, Mr. Messer. The questions and answers that he elicits from these people other than what I had takes an average of two and a half minutes. All I am trying to get them to do is to identify themselves. They are defendants before this Court and I ask them if it is corroborative.

I didn't ask you to stipulate. If you want to, that is perfectly all right.

Mr. Messer: I will be glad to.

Mr. Simon: I still have to have these people identify themselves to the Court.

[fol. 238] Thereupon, ROBERT J. STONE, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, address and occupation.

A. Robert J. Stone, 153 East 30th Street, New York. I am a minister.

Q. What denomination?

A. Presbyterian.

Q. How long have you been engaged in that profession?

A. 12 years.

Q. Do you hold any degrees from any colleges and universities?

A. Yes. A Bachelor of Arts from the University of Oklahoma and a Bachelor of Divinity from Union Theological Seminary.

Q. Do you hold an active pulpit at this time?

A. Yes.

Q. Where?

A. In New York. It is the Adams-Parkhurst Memorial Presbyterian Church. I am also director of the church sponsored community center, The Madison Square Church House.

[fol. 239] Q. Did you join this group of Freedom Riders on June 12th, 1961?

A. Yes.

Q. Did you journey with them to Tallahassee and arrive here on June 15th, 1961?

A. Yes.

Q. Did you then go to the Tallahassee Municipal Airport and remain there through the 16th of June, 1961 at which time you were arrested?

A. Yes.

Q. Would your testimony as to the events of these days be merely corroborative of the testimony of the others that have previously testified?

A. Generally yes, but I did have the occasion to look into the kitchen a number of times?

Q. The kitchen of the restaurant?

A. Yes.

Q. Will you tell us when you did examine the kitchen of the restaurant.

A. Thursday, the 15th in the evening, about 6:00 o'clock approximately.

Q. Any other occasion?

A. On Friday morning.

Q. At what time?

[fol. 240] A. Around 9:00 o'clock.

Q. Did you see any repairs being done by any workmen to the kitchen of the restaurant on those occasions?

A. No repairs but I saw some people being served food.

Q. Do you know who they were?

A. Well, it was just on Thursday evening, I saw two or three people being served food; only one I recognized who has been identified to me as the Captain of the detectives who has been in the courtroom today.

Q. Did you see any evidence of repairs being done?

A. No.

Mr. Simon: You may inquire, sir.

Cross examination.

By Mr. Hill:

Q. Have you had any training in the field of engineering or refrigeration?

A. No.

Q. Did you hear the witness who is manager of the restaurant testify that he had some problems in connection with his refrigeration?

A. No, I could not hear his testimony.

Q. If he said that then, you do not know whether or not he was actually in the process of repairing his refrigeration equipment?

A. No, I don't.

[fol. 241] Mr. Hill: No further questions.

The Court: Anything further, Mr. Simon?

Mr. Simon: Yes.

Redirect examination.

By Mr. Simon:

Q. Reverend Stone, what is your color?

A. White.

Mr. Simon: Reverend Warner, what is your color?

Defendant Warner: White.

Mr. Simon: Reverend Wayne C. Hartmire I will call next.

Thereupon, WAYNE C. HARTMIRE, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, address and occupation.

A. Wayne C. Hartmire, H-a-r-t-m-i-r-e, Jr. My address is 218 East 104th Street, New York City 29, New York. I am a minister.

Q. What denomination of the ministry?

[fol. 242] A. United Presbyterian Church in the United States of America.

Q. How long have you been engaged in this profession?

A. I was ordained in 1960.

Q. Do you hold an active pulpit at this time?

A. I am a member of the staff of the Church of the Resurrection of the East Harlem Protestant parish.

Q. Is that in New York?

A. That is in New York City, yes, sir.

Q. What is your color?

A. White.

Q. Did you join this group of Freedom Riders on June 12th, 1961?

A. Yes, I did.

Q. Did you journey with them from Washington, D. C. to Tallahassee, Florida?

A. Yes.

Q. Did you on June 15th, 1961 go to the Tallahassee Municipal Airport and remain there with the others in your group through Friday, June 16th, 1961 at which time you were arrested?

A. Yes.

Q. Have you heard the testimony of the other witnesses who are defendants with you?

A. Yes, I have.

[fol. 243] Q. If you were called upon to testify would your testimony be merely corroborative of what they had to say?

A. Yes, sir, except that I might add that I was one of three who were led to believe that the restaurant would be opened for us that afternoon.

Q. Did you have a conversation on Thursday, June 15th, with the manager of the restaurant?

A. Yes, I did.

Q. What did he say to you?

A. He indicated to us that this day was his one cleaning day of the month and that he would be closed until 4:30 in order to clean the restaurant. At that time he expected to open.

Q. Did he say anything else to you concerning the reasons why the restaurant was closed?

A. No, sir, he did not.

Q. What is your educational background? Do you hold any degrees from a university or college?

A. Yes, I do. I am a graduate of the Princeton University with a degree of Bachelor of Science and Civil Engineering and a Bachelor of Divinity from Union Theological Seminary in New York.

Q. Did you have the occasion to observe the arrest of Priscilla Stephens?

A. I observed her being handcuffed and placed in a police [fol. 244] car.

Q. Did you have the occasion to observe when she left the terminal?

A. No, sir, I did not.

Mr. Simon: I have no further questions.

Cross examination.

By Mr. Messer:

Q. What did you say your last name was?

A. Hartmire.

Q. How old are you, Reverend Hartmire?

A. 29.

Q. Where were you born?

A. I was born in Philadelphia, Pennsylvania.

Q. After the airport manager or the restaurant manager told you he expected to open up at 4:30 and you had reservations out on the 3:25 flight why did you remain?

A. We remained in the hope that we could be served at the restaurant.

Q. You were served at the bus station restaurant?

A. I sat at the lunch counter and ate a piece of pie. I, too, had difficulty—

Q. In effect, wasn't the whole purpose of this trip down here by you and your group just purely one of demonstration?

A. No, sir.

[fol. 245] Q. What was it?

A. I think the purpose has been stated clearly by other witnesses.

Q. I want your statement.

A. I will be happy to repeat it. Our primary purposes were two: First of all, as rabbis and Christian clergymen

to witness to our conviction that God cares about all men equally and he cares deeply when their dignity is denied them or destroyed by any system and our desire to stand with them in their battle against segregation which we feel does deny that dignity.

Secondly, that—

Q. Let me interrupt.

You had no problem on the bus trip down?

A. Yes, sir, we did but I am not sure you are interested in the problem prior to Tallahassee.

Q. I mean not here in Tallahassee at the bus terminal, you had no problem there. You walked in and were served?

A. I had no problem in the bus terminal in Tallahassee.

Q. You had a piece of pie and a cup of coffee?

A. A piece of pie. I don't drink coffee.

Q. Didn't you have milk?

A. No. I had nothing to drink.

Q. Then you went to the airport?

A. Yes, sir, we did.

[fol. 246] Q. Then you were hungry again, I guess, and wanted to eat again?

A. I was continually hungry.

Mr. Messer: No further questions.

The Court: Order in the court, please.

Anything further?

Mr. Messer: I have no further questions.

Redirect examination.

By Mr. Simon:

Q. Reverend, I think you started to say that there was a second reason in response to Mr. Messer's question. Would you finish that, please?

A. Our second purpose was to, as an integrated group, travel on an interstate bus line and test those facilities as to their integrated character, those terminal facilities that we confronted.

Mr. Simon: I have no further questions.

Recross examination.

By Mr. Messer:

Q. Who paid your expenses?
A. Pardon?
Q. Who paid your expenses?
A. My expenses are being paid by CORE. The congregation I serve will pay as much as they are able towards these expenses.

Mr. Messer: That is all.

[fol. 247] Redirect examination.

By Mr. Simon:

Q. What is your color?
A. White.

Mr. Simon: Reverend Stone?
Defendant Stone: White.
Mr. Simon: That is all I have of this witness.

(Witness excused.)

The Court: Call your next witness.

Thereupon, PETTY D. MCKINNEY, defendant, called as a witness in his own behalf, having been previously duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, address and occupation.
A. Reverend Petty D. McKinney, 75 Wilburham Avenue, Springfield, Massachusetts. I am an American negro and pastor of the Garden Memorial Design Church.
Q. You are a clergyman at the present time?
A. Yes, sir.
[fol. 248] Q. How long have you been engaged in that profession?

A. Since 1948.

Q. Do you hold an active pulpit at the present time?

A. I do, yes.

Q. What church?

A. Garden Memorial.

Q. Is that in Springfield, Massachusetts?

A. Yes.

Q. Do you have any degrees from colleges and universities?

A. Well, I attended New York University and Livingston College and majored in religious education. I am the recipient of a Bachelor of Arts degree and also Hood Theological Seminary with a Bachelor of Divinity degree.

Q. Did you join the Freedom Riders, this group of Freedom Riders, on June 12th, 1961?

A. I did.

Q. In Washington, D. C.?

A. Yes.

Q. You journeyed with them to Tallahassee, Florida?

A. I did.

Q. You arrived here on June 15th, 1961?

A. Yes.

Q. Did you on that date go to the Tallahassee Municipal [fol. 249] Airport?

A. I did.

Q. You remained there with the other defendants through June 16th, 1961 at which time you were arrested?

A. I did, that's correct.

Q. If I were to inquire of you as to the details of these days would your testimony be corroborative of the other witnesses who testified before you?

A. My testimony would be the same as the previous witnesses.

Q. Now, sir, did you have the occasion to observe the arrest of Priscilla Stephens?

A. I did, sir, yes.

Q. Did you have occasion to observe when she left the terminal?

A. Not when she left, I did not.

Q. Do you know—

A. At the time of her arrest I did.

Q. Do you know whether she left before or afte. you did?

A. She left before because when we came out of the station she wasn't behind us. She was out there on the sidewalk and I went into one of the patrol cars and that is when I found out she was under arrest. I heard an officer say, "Get in the car, Priscilla," and I heard Priscilla say, "You [fol. 250] ordered me to go so I was on my way home."

He put her in handcuffs and put her in the car.

Q. Did she resist the officer in any way?

A. I didn't see her make any demonstration as far as resisting arrest. I did hear her say, "You ordered me to go so I left. I was on my way home."

Mr. Simon: You may inquire.

Cross examination.

By Mr. Hill:

Q. You say you did not see her leave at all?

A. I didn't see her leave.

Q. After you were outside you saw her outside?

A. When we came out she was on the outside, yes.

Mr. Hill: No further questions.

(Witness excused.)

• • • • • • •

[fol. 263] Thereupon, ORVILLE HOPKINS, recalled as a witness by the defendants, having been previously duly sworn, testified further on his oath as follows:

Direct examination.

By Mr. Simon:

Q. Mr. Hopkins, please restate your name.

A. Orville Hopkins.

Q. Mr. Hopkins, you are the City Manager of the City of Tallahassee and you were engaged in this occupation during the week of July 12th, 1961, were you not?

A. Yes, sir.

Q. Did you have the occasion to discuss the closing of

the restaurant at the Tallahassee Municipal Airport with any person or persons during that week?

A. I believe I discussed it with the manager of the res-
[fol. 264] taurant, yes.

Q. Was that in connection with the pending trip of these defendants to this City?

A. Not necessarily, no.

Q. Was it in part?

A. If it was it was a mighty small part. Would you like for me to tell you the conversation I had with the manager of the restaurant?

Q. Yes, sir. I would first like to hear what part the trip of these defendants had with it and then you can explain your answer.

A. I believe it was mentioned in the discussion with the manager of the airport, since he had to close for repairs anyway and since they had had riots in other areas from these bus riders that it might be the best time for him to do his repairs.

In fact, last Thursday the engineers, the City engineers was here from Jacksonville going over some of the cooling system in the restaurant that we had quite a bit of trouble with. In fact, I saw one of them out there when I was out there that time, the FAA inspectors.

Q. So that since there was some repair work that had to be done you felt it might be a good idea to avoid the difficulty that an integrated group would cause?

A. I don't think that played a major part in it whatso-
[fol. 265] ever.

Q. It was a small part?

A. Yes.

Q. Do you recall the date on which it was closed?

A. I believe it was closed last Thursday when I was out there one time. I remember buying a sandwich in one of those machines.

Q. It was closed in the middle of the day, wasn't it?

A. It was when I got there and that was about 2:00 or 3:00 o'clock.

Q. It was open for part of the day and it closed part of the day?

A. If it was open in the morning I don't know. I was there in the afternoon.

Q. Did you have any further conversations with Mr. Isdell about the opening of the restaurant and the subsequent reclosing of it?

A. Not that I can remember, no, sir.

Q. You know that it remained closed during the time that these defendants were sitting out in the terminal?

A. It was closed on Thursday night, I know, because I was there myself.

Q. It was closed on Friday, wasn't it?

A. I believe it was, yes.

[fol. 266] Q. Then when these people left on Saturday it reopened?

A. If it opened I don't know. I wasn't there on Saturday.

Q. How about Sunday and Monday?

A. I believe I had lunch there Monday if I'm not mistaken.

Q. So you know it reopened on Monday?

A. I don't remember. It was one day this week that I had lunch there. I don't know if it was Monday or Tuesday.

Q. You know it is closed today, do you not?

A. I had heard it was closed, yes.

Q. As a matter of fact, didn't you—

A. I haven't been out there, no.

Q. (Continuing) —didn't you and Mr. Isdell discuss the fact it should be closed because these people were coming back?

A. No, sir.

Q. Does the City have a policy directing that the restaurant be closed to avoid integrated eating in the restaurant?

A. I don't think it is a policy, no, sir.

Q. Whose idea was it to put up a white and colored eating facility?

A. Well, it was an agreement between the City and the several restaurant people that we would have just as [fol. 267] good facilities for one as the other.

Q. In your opinion, do you feel that one facility is just as good as the other?

A. They said they would make one facility as good as the other.

Q. But they didn't did they?

A. If it is not as good I believe they would make it as good.

Q. Is it as good?

A. In comparison to the volume of traveling public through there I would say yes.

Q. The white dining room is all glassed in, is it not?

A. That is very true.

Q. The colored area is not?

A. That is very true.

Q. The white dining room has chairs and tables?

A. Very true.

Q. They have none in the colored area?

A. That is right.

Q. In the colored area all they have are little stools you sit at a counter on?

A. That's right, and I believe that he had discussed in case it was needed, if it showed the need for it, they would be willing to put the tables in the colored section too.

[fol. 268] Q. Under no circumstances would they have the white and colored eating in the same area?

A. State your question again.

Q. Was it also agreed that they would under no circumstances have the white and colored eating in the same area?

A. Very true.

Q. As City Manager you do not have any direct management or control over the question of peace and safety or police protection, do you?

A. I have all the control over the police protection in the City of Tallahassee.

Q. Do the police act under your jurisdiction?

A. Yes, sir.

Q. Is the Chief of Police in this town an elected official or is he appointed by you?

A. He is appointed by the City Manager.

Q. He is your appointee?

A. Yes, sir.

Q. He acts under your direction and control?

A. Yes, sir.

Q. Do the records of your office contain any building

permits reflecting the repairs down at the Tallahassee Municipal Airport during the two days that the Freedom Riders were sitting out there?

[fol. 269] A. No, sir.

Q. What is that?

A. No, sir, not that I know of. I could check the Building Inspection Department and determine that. I haven't gone through the records.

Q. There was no conversation between you and the manager of the restaurant about his taking out a work permit before he closed the place in the middle of the day?

A. There was no construction that he knew of, any adding on or any major repairs that require a permit anyway. The question was of small repairs to motors in the cooling system mostly I believe it was.

Q. Was that the air conditioning or the refrigeration?

A. No, sir, it was the refrigeration.

Q. The refrigeration apparently continued to work because they continued to serve meals to airliners, didn't they?

A. Yes. It was some other repairs. What it was I don't know. I believe he had a clean-up job. He discussed that he wanted to do that with me, too.

Q. That was mopping?

A. Yes, sir.

Q. That took how long?

A. I don't know.

Q. This is the first time the restaurant has been closed [fol. 270] to your knowledge?

A. To my knowledge, yes, sir.

Q. You don't actually have anything to do in your capacity of City Manager with the operation of this restaurant, do you?

A. Not as far as the actual operation of it, no.

Q. If the manager of the Savarin chain was to be replaced that wouldn't come through your office, would it?

A. No, sir.

Q. You don't have anything to do with the operation or control of the restaurant?

A. No, sir, not that type.

Q. I'm sorry?

A. Not that type, no.

Q. So that when you and Mr. Isdell discussed the closing of the restaurant the discussion about repairs had nothing to do with the work of your office?

A. I don't believe I understand that exactly.

Q. I mean, you don't have anything to do with the repairs in the restaurant, do you?

A. No, sir. They pay for that themselves.

Q. That's right, and consequently the discussion about repairs, they didn't have to come to you in order to do the repairs, did they?

[fol. 271] A. Not as far as repairs are concerned, no.

Q. The City wasn't going to pay for it?

A. No, sir.

Q. Did you call Mr. Isdell or did he call you?

A. I don't remember. In fact, I think I was out there eating lunch and we discussed it. I believe that is the way it was.

Q. That is the time that you all decided that it would be a good idea to close the restaurant down to avoid some difficulty?

A. No. It was—it was the idea to close the restaurant down for repairs and a cleaning up. There was a discussion and since he had to do it we thought it was an opportune time to do it in the face of riots in these other areas.

Q. What is that?

A. Where these bus riders had been in other areas that they had riots and it might happen here. Since it had to be closed down it would be a good time to do it.

Q. Do you think that if you had exhibited your influence with Mr. Isdell that he would have kept this restaurant open?

A. I just don't know.

Q. Didn't you and the City officials co-operate with the Greyhound Bus Company to see that there was an integrated eating pattern established at the Greyhound bus terminal?

A. I never had a discussion with any bus or Greyhound [fol. 272] people as far as integrating the counters are concerned.

Q. Isn't that something that you as a City Manager

of Tallahassee were interested in achieving for the purpose of avoiding trouble?

A. We are interested in safety and the protection of everybody.

Q. Do you know whether the outfit that runs the restaurant out there is the same, that is the Union News Company? Is that the same as the American News Company?

A. I don't know.

Q. Do you know who operates the restaurant out at the air terminal?

A. Mr. Isdell is the manager of it.

Mr. Messer: If the Court please, counsel for the defense without objection from the City introduced in evidence a copy of the lease, a certified copy of the lease between the American News Company and the City of Tallahassee which speaks for itself. I see no need to go on with this line of questioning.

Mr. Simon: I think you are absolutely right, Mr. Messer. I will withdraw that question and we have no further questions.

The Court: Any questions?

Mr. Messer: No questions.

(Witness excused.)

[fol. 273] Mr. Dixon: I would like to recall Reverend Hartmire, please.

Thereupon, WAYNE C. HARTMIRE, defendant, having been previously duly sworn, was recalled to the stand and testified further on his oath as follows:

Direct examination.

By Mr. Dixon:

Q. Reverend Hartmire, on Saturday, June 17th, did you have occasion to be in the lobby of the terminal?

A. Yes, sir, I did.

Q. Did you have occasion to look through the glass wall into the restaurant area at that time?

A. Yes, I did.

Q. What did you see on that occasion?

A. On Saturday, June 17th, on our way to catch a National Airlines flight I noticed that there were several tables full and customers eating at these tables in the restaurant.

Q. Did you at that time attempt to go into the restaurant?

A. I did not.

Q. Do you know if the restaurant was open to any of you or your associates?

[fol. 274] A. The restaurant had the "Closed" sign on the door and I believe that one of the group tried the door and it was locked.

Mr. Dixon: Your witness.

Cross examination.

By Mr. Messer:

Q. Reverend Hartmire, isn't it quite customary for restaurants to have a closing time?

A. Yes, sir, it is.

Q. Actually, the fact that people were eating in there wouldn't mean that they were continuing to be open for business, would it? In other words, they would have to let people in there finish?

A. That's true, sir.

Q. What time was it that you arrived at the airport on Saturday afternoon?

A. It was about 2:30 in the afternoon.

Q. After the usual noon meal hour?

A. I would agree, yes, sir.

Mr. Messer: That is all.

(Witness excused.)

DEFENSE RESTS

Mr. Simon: The defense rests.

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[fol. 278] RULING OF THE COURT

The Court: You defendants have been arraigned and entered pleas of not guilty. After hearing all of the evidence and duly considering the same the Court finds you, Israel Dresner, guilty as charged and the sentence of the law and the judgment of the Court is for your said offense you paid a fine of $500.00 or serve 60 days in the City Jail.

Austin Warner, on your plea of not guilty the Court finds you guilty as charged and it is the sentence of the law and the judgment of the Court that you pay a fine of $500.00 or serve 60 days in the City Jail.

Robert McAfee Brown, the Court finds you guilty as charged and it is the sentence of the law and the judgment of the Court you pay a fine of $500.00 and in default of said fine you be confined in the City Jail for a period of 60 days.

Petty D. McKinney, the Court finds you guilty as charged. It is the sentence of the law and the judgment of the Court you pay a fine of $500.00 and in default of said fine you be confined in the City Jail for a period of 60 days.

Martin Freedman, on your plea of not guilty the Court after hearing the evidence and considering the same finds you guilty of same. It is the sentence of the law and the judgment of the Court you pay a fine of $500.00 and in default of said fine you be confined in the City Jail for a period of 60 days.

[fol. 279] Arthur L. Hardge, the Court finds you guilty as charged. It is the sentence of the law and the judgment of the Court you pay a fine of $500.00 or in default of the $500.00 you serve 60 days in the City Jail.

Robert John Stone, on your plea of not guilty the Court finds you guilty as charged and it is the sentence of the law and the judgment of the Court you pay a fine of $500.00 or serve 60 days in the City Jail.

Wayne C. Hartmire, the Court finds you guilty as charged and it is the sentence of the law and the judgment of the Court you pay a fine of $500.00 or serve 60 days in the City Jail.

J. W. Collier, Jr., the Court finds you guilty as charged and it is the sentence of the Court you pay a fine of $500.00 and in default of said fine that you be confined in the City Jail for a period of 60 days.

Charles A. Hunter, nol. prossed.

Ralph Lord Roy, on your plea of not guilty the Court finds you guilty as charged and it is the sentence of the law and the judgment of the Court you pay a fine of $500.00 and in default of said fine you be confined in the City Jail for a period of 60 days.

Gentlemen, it is not my business to lecture but I want to assure you that if I thought for one minute or if the facts in this case supported the thought for one minute that you [fol. 280] all came here on a noble, Christian purpose and had acted accordingly when instructed to vacate and leave that you would not be here. I am not attempting to change your minds about anything that you think but I wish that you would stop and think this: When you do get back home to your respective cities that you would check the criminal rates and the prostitution rates and the racial strife as compared as to what you find in Tallahassee and then when you have cleaned up your own bailiwick or whatever it is, then we would welcome your suggestions.

Until that time I think you have more than you can do at home. You came here for the sole purpose of forcing your opinions and your views on this community. No matter how noble your reasoning sounds to you or how you have testified in this court it all boils down simply to that fact. You all have traveled a thousand miles in order to be deprived of something that you had at home already and then you get all of the United States embroiled in something.

That is the basis of this ruling, that you came here lawfully, you were protected thoroughly and completely over a long period of time, many many hours, much to the neglect of the other 50,000 or 75,000 people in this County and this City and your continued lawful assembly became unlawful when the temper of the community reached the point that it did and the proclamation was read to you. I am sure your attorneys can explain that to you but [fol. 281] somehow I feel you aren't interested in it at all anyway.

Have a seat.

* * * * * * *

[fol. 299]

DEFENDANTS' EXHIBIT "1A" FOR IDENTIFICATION AND ADMITTED IN EVIDENCE AS DEFENDANTS' EXHIBIT "2"

(Letterhead of the City of Tallahassee, Florida.)

My name is James Messer, Jr. I am City Attorney and a special police officer of the City of Tallahassee.

I am advised that your assembly here will tend to create a disturbance or incite a riot or disorderly conduct within the City of Tallahassee, therefore, as a special police officer of the City of Tallahassee and in the name of the State of Florida and the City of Tallahassee, I command all of you who are here assembled immediately and peaceably to disperse. If you do not immediately and peaceably disperse, I shall arrest you, or cause you to be arrested, for unlawful assembly.

[fol. 300]

ATTACHMENT TO TRANSCRIPT

IN THE MUNICIPAL COURT

IN AND FOR THE CITY OF TALLAHASSEE

A MUNICIPAL CORPORATION OF FLORIDA

Case Nos. 77900-77912

CITY OF TALLAHASSEE, Plaintiff,

vs.

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. MCKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN J. POLAND, JR., and PRISCILLA G. STEPHENS, Defendants.

Stipulation

It Is Hereby Stipulated between Counsel for the above named, and in the above-styled causes, that the Talla-

hassee Municipal Airport in Leon County, Florida, is on property owned by the City of Tallahassee, and said Airport is operated by the City of Tallahassee, and was on June 15th and 16th, 1961, so operated and on such property, which is without the corporate limits of said City.

Edw. J. Hill, Counsel for Plaintiff, the City of Tallahassee, Florida.

[fol. 301] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 302]

IN THE MUNICIPAL COURT

IN AND FOR THE CITY OF TALLAHASSEE

A MUNICIPAL CORPORATION OF FLORIDA

Case Nos. 77900-77912

CITY OF TALLAHASSEE, Plaintiff,

—vs.—

ISRAEL DRESNER, et al., Defendants.

ASSIGNMENTS OF ERROR—Filed July 19, 1961

The Defendants, by their undersigned counsel, assert the following as assignments of error to be relied upon in the within appeal:

1. The Court erred in entering its judgment against the Defendants for the reason that the statute pursuant to which the Defendants were arrested and which the Defendants are charged with having violated, namely, F.S. Chapter 61—is invalid and unconstitutional and violates the rights of the Defendants under the Florida and Federal Constitutions and denies to them the due process of law and the equal protection of laws and consequently, the Defendants were unlawfully and illegally arrested and the charges placed against them were without foundation.

2. The Court erred in entering its judgment against the Defendants for the further reason that the said arrests and charges constitute a denial to the Defendants of the equal protection of the law under the Fourteenth Amendment to the Federal Constitution; a denial of due process of law guaranteed thereby; a denial of the privileges and immunities of state citizenship guaranteed thereby; and a [fol. 303] denial of the privileges and immunities of Federal citizenship since the Defendants were deprived of restaurant facilities in the Tallahassee Municipal Airport owned and operated as an instrumentality of the City of Tallahassee, by reason of their color or association with persons of color, and the said facilities were not made available to them without regard to their race or color.

3. The Court erred in entering its judgment against the Defendants for the reason that the Defendants were passengers in interstate commerce awaiting departure of their plane from Tallahassee to points outside the state of Florida, and consequently, the racially discriminatory arrests and prosecutions brought against the Defendants, constitute a violation of their rights of unfettered travel free of racial discrimination under the Interstate Commerce Clause of the Federal Constitution (Article 1, Section 8, Clause 3), a violation of their privileges and immunities of Federal citizenship, a violation of the Federal Aviation Laws, and a violation of the Federal Aviation Act of 1958, and in particular, Section 404 of said Act (72 Stat. 760; 49 U.S.C.A., Section 1374 (b)).

4. The Court erred in entering judgment against the Defendants for the reason that the arrests of the Defendant and their prosecutions in view of the evidence constitutes a violation of their liberty of contract as guaranteed by the Fourteenth Amendment to the Federal Constitution.

5. The Court erred in entering its judgment against the Defendants for the reason that the acts of the city officials in arresting and prosecuting the Defendants who constituted a party of negroes and persons in association with negroes and who were peaceable, quiet and dignified at

all times, constitute patent racial discrimination by a muni-
[fol. 304] pality in violation of the due process clause and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in entering its judgment against the Defendants for the reason that the same was contrary to the weight of the evidence.

7. The Court erred in entering its judgment against the Defendants for the reason that the same was contrary to law.

8. The Court erred in entering its judgment against the Defendants for the reason that the arrests of the Defendants and their subsequent trial and conviction by the Municipal Court in and for the City of Tallahassee constituted racial discrimination against the Defendants by reason solely of their color or association with persons of color in violation of the obligations placed upon the states by the Fourteenth Amendment to the Constitution of the United States not to discriminate against any person or persons solely by reason of their color or association with persons of color.

9. The Court erred in entering its judgment against the Defendants for the reason that the arrests of the Defendants by peace officers and public officials of the City of Tallahassee and the Defendants' subsequent trial and conviction in and by the Municipal Court in and for the City of Tallahassee, constituted state aid of racial discrimination against the Defendants by reason solely of their color or association with persons of color by a lessee-restauranteur (at the airport) of the City of Tallahassee, in violation of the obligations placed upon the states by the Fourteenth Amendment to the Constitution of the United States not to discriminate against any person or persons solely by reason of their color or association with persons of color, and also in violation of the Federal Aviation Act of 1958 and [fol. 305] in particular, Section 404 of said Act (72 Stat. 760; 49 U.S.C.A., Section 1374 (b)), and in further violation of the obligations placed upon the City of Tallahassee,

a Florida Municipal Corporation, by the provisions of F. S. 332.08 (3).

Tobias Simon, Howard W. Dixon, and Robert J. Ramer, Attorneys for Defendants, 706 Ainsley Building, Miami 32, Florida, By: Tobias Simon, Of Counsel.

[File endorsement omitted]

[fol. 306] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 307] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

ISRAEL DRESNER, et al., Appellants,

v.

CITY OF TALLAHASSEE, Appellee.

STIPULATION TO SUPPLEMENT RECORD-ON-APPEAL—
Filed October 30, 1961

Counsel for the Appellants and Counsel for the Appellee hereby stipulate that the Record-on-Appeal in this cause be supplemented by including therein the texts of Ordinance #851 and Sec. 23-5, and Sec. 23-38 of the 1957 City of Tallahassee Code, which provides as follows:

"Sec. 23-5 Any person or persons who shall stand, congregate or assemble upon any of the sidewalks or corners of the streets, or in, around or about the parks or other public places or buildings in this city to the annoyance of or hindrance to the passers-by, shall be liable to arrest, and it shall be the duty of the chief of police or any other officer of the police force under his direction, to order all persons violating this section to move away or disperse and in case of neglect or refusal to obey such order, to arrest or cause to be

arrested the person so refusing or neglecting to obey, and take him or them before the municipal court for trial."

"Ord. #851—Sec. 1 If any person or persons, whether armed or not, are unlawfully, riotously or tumultuously assembled within the City of Tallahassee, the Mayor, any city commissioner or any police officer or member of the Police Department of the City of Tallahassee, whether such member be a regular or special police officer appointed for temporary service, when in the opinion of the said Mayor, commissioner or police officer or member of the Police Department of the City of Tallahassee, whether such member be a regular or special police officer appointed for temporary service, the assembly of such persons shall tend to create a disturbance or incite a riot or disorderly conduct with-[fol. 308] in said City, the Mayor, any city commissioner or any police officer or member of the police Department of the City of Tallahassee, whether such member be a regular or special police officer appointed for temporary service, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the State of Florida and the City of Tallahassee command all the persons so assembled immediately and peaceably to disperse, and if such persons so commanded do not thereupon immediately and peaceably disperse, the city officers hereinabove named shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such person or persons refusing to obey such command, or in suppressing a riot or unlawful assembly, refuses or neglects to obey such command, or when required by the officers authorized by this ordinance to issue such command, to depart from the place, refuses and neglects to do so, he shall be deemed one of the persons unlawfully assembled and shall be prosecuted and punished as hereinafter provided by this ordinance.

Sec. 2. Any person refusing to obey the command to disperse as provided under the terms of this ordinance shall be deemed guilty of disorderly conduct and shall be subject to the penalties of this ordinance as hereinabove provided.

Sec. 3. Any person violating any of the provisions of this ordinance shall upon conviction thereof be punished by a fine not exceeding Five Hundred Dollars ($500.00) or imprisonment not exceeding sixty (60) days, or by both such fine and imprisonment. Each and every violation of any provisions of this ordinance shall constitute a separate offense.

Sec. 4. This ordinance shall take effect as provided by the charter act of the City.

"Sec. 23-38 It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor, and the commission of any such acts is hereby forbidden.

"Whosoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is therefor provided by the laws of the state, but in no case shall such penalty exceed [fol. 309] a fine of five hundred dollars, or an imprisonment for more than sixty days, or both such fine and imprisonment in the discretion of the municipal judge."

Dated this 26 day of October, 1961.

Alfred I. Hopkins, Counsel for Appellants, 707 Ainsley Building, Miami, Florida, Alfred I. Hopkins.

James Messer, Jr. & Edw. J. Hill, Counsel for Appellee, 216 East Jefferson Street, Tallahassee, Florida, James Messer, Jr., Edw. J. Hill.

[fol. 310] Clerk's Certificate to the foregoing paper (omitted in printing).

[fol. 311]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

July Term, A. D. 1961

Case No. 31,121

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. MCKINNEY, MARTIN FREEDMAN, ROBERT J. STONE, ARTHUR L. HARDGE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH LORD ROY, Appellants,

vs.

CITY OF TALLAHASSEE, Appellee.

An Appeal from the Municipal Court, in and for the City of Tallahassee, John A. Rudd, Judge.

Tobias Simon, Alfred I. Hopkins and Howard W. Dixon, for Appellants.

James Messer, Jr., City Attorney, and Edward J. Hill, City Solicitor, for Appellee.

OPINION—Filed November 1, 1961

THORNAL, J.

We have for consideration a motion to dismiss a direct appeal from the Municipal Court of the City of Tallahassee. We must decide whether this Court has jurisdiction to consider the appeal.

The City charged that the appellants did "unlawfully assemble . . . contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida." A trial in the municipal court culminated in a finding of guilt and a sentence to pay a fine with an alternative term in the [fol. 312] city jail. At the outset of the trial the appellants moved to dismiss the complaint with the contention that Section 870.04, Florida Statutes, as amended by Chapter 61-237, Laws of Florida, 1961, was being invalidly applied against

them. The City Judge announced that "the statute is not unconstitutional on its face." Coming here directly from the municipal court appellants contend that the trial judge passed directly on the validity of a state statute and that we, therefore, have jurisdiction pursuant to Section 4, Article V, Florida Constitution. The appellee's motion to dismiss questions the jurisdiction of this Court to determine the matter on a direct appeal. This motion has been argued and is now here for disposition.

The appellants were charged with the violation of the municipal ordinances of the City of Tallahassee. Nowhere in the complaint were they charged with a violation of a state statute. A reference to Section 870.04, supra, as amended, will reveal that the statute condemns a riotous assembly and provides a penalty under Section 870.02, Florida Statutes. The offense described in the statute is a misdemeanor triable in the state courts. The statute does not even impliedly define a municipal offense. This distinction is important in determining our jurisdiction. It is perfectly clear that the municipal judge was not confronted by the necessity of passing directly on the validity of a state statute. The most that could be said would be that he was called upon to pass upon the validity of a municipal ordinance. In actuality, the record indicates that he was merely requested to decide that "the statute" was invalid "as applied to the appellants." The real contention asserted before the trial judge questioned the application of the statute, rather than its fundamental validity.

This Court derives its appellate jurisdiction from Article V, Florida Constitution. By Section 4(2), Article V, supra, appeals from trial courts may be taken directly to this Court from certain specified types of judgments. Among these are "final judgments or decrees directly passing upon the validity of a state statute . . . or construing a controlling provision of the Florida or federal constitution . . . " We [fol. 313] must look to this constitutional provision as the source of our jurisdiction to entertain the instant appeal.

It is clear that the trial judge, at most, was called upon to pass upon the validity of a municipal ordinance. This is so because the appellants were charged with a violation of the municipal ordinances, rather than with a violation of a

state statute. We have long ago held under Section 4(2), Article V, supra, that this Court did not have the power to entertain a direct appeal from a judgment of a trial court which merely passes upon the validity of a municipal ordinance. For purposes of determining the jurisdiction of this Court, a municipal ordinance cannot be classified as a "state statute." Armstrong et al. v. City of Tampa, Fla., 1958, 106 So. 2d 407. While conceivably a municipal court could be considered as a "trial court" from which a direct appeal could come here if in some peculiar situation the municipal court passed directly upon the validity of a state statute, such is not and could not have been the instant situation. Boyd v. County of Dade, Fla., 1960, 123 So. 2d 323. Moreover, even though the appellants attempted to question the validity of the application of the cited statute, they did not in any fashion assault the fundamental validity of the statute itself. Jurisdiction comes to us by direct appeal when the validity of the statute is assaulted and passed upon. When the problem involves the validity of the application of an otherwise valid statute, a direct appeal here is not available unless there be a final judgment or decree which construes a controlling provision of the State or federal constitutions. Stein v. Darby, et al., opinion filed October 11, 1961. In the instant case there was certainly no such construction. The final judgment of the municipal judge merely contained a finding of guilt and the assessment of the fine. Nowhere in the record is there a construction of the constitution. Armstrong v. City of Tampa, supra.

Although ordinarily motions of the type involved here would be disposed of without opinion, we deemed it appropriate to elaborate on our reasons for the future guidance of the Bar.

[fol. 314] Finding as we do that this Court is without jurisdiction to hear the instant appeals, the motion to dismiss is well-taken. However, we will treat the motion as a motion to transfer an appeal improvidently lodged in this Court. Rule 2.1a (5)(d), Florida Appellate Rules. Under Section 6, Article V, Florida Constitution, the circuit courts have jurisdiction to hear appeals from municipal courts when they involve questions such as those presented here. It is, therefore, ordered that within five days from the

filing of this opinion all papers, records, briefs and other documents, including the notice of appeal, be and the same are hereby transferred to the Circuit Court, Second Judicial Circuit for appropriate disposition. Our opinion is not to be construed as in any fashion passing upon the merits of the appeal or the sufficiency of the record, including the notice of appeal. These are matters to be disposed of by the circuit court in the exercise of its appellate jurisdiction.

It is so ordered.

Roberts, C.J., Hobson, Drew and O'Connell, JJ., concur.

[fol. 315] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 316] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF FLORIDA

SECOND JUDICIAL CIRCUIT

IN AND FOR LEON COUNTY

At Law

No. 10084

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. MCKINNEY, MARTIN FREEDMAN, ROBERT J. STONE, ARTHUR L. HARIDGE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH LORD ROY, Appellants,

vs.

CITY OF TALLAHASSEE, Appellee.

ORDER AFFIRMING JUDGMENT—Entered August 16, 1962

This is an appeal from convictions in the Municipal Court of the City of Tallahassee, Florida of the ten appellants named in the caption who were charged with unlawful assembly. A fine was assessed against each of them with an alternate jail sentence.

The formal charge is in a single count naming the ten appellants and three others* as defendants and alleges an unlawful assembly on June 16, 1961 "in that, they being more than three (3) persons, met together to commit a breach of the peace, acting together and concertedly to occupy and continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace, and while so unlawfully assembled" were commanded by a [fol. 317] police officer of the city, after identifying himself as such, to immediately and peaceably disperse, and they refused or neglected to do so.

The appellants contend that the judgments pursuant to convictions violate their rights guaranteed by the Florida and United States Constitutions in that they have been denied the equal protection of the laws and have been deprived of liberty or property without due process of law. They contend that the state statute, Chap. 61-237, Laws of 1961, (F. S. 870.04), (which, by reference adoption in a municipal ordinance,** is made an ordinance of the City of Tallahassee) is unconstitutional and void, either on its face or as it has been applied to the appellants in this case.

The pertinent portions of the statute, adopted as an ordinance, are:

> "If any number of persons . . . are unlawfully, riotously or tumultuously assembled in any . . . city or municipality . . . any . . . police officer of said city or municipality . . . shall go among the persons so as-

---

* Of these three one was acquitted and the other two were granted a nolle prosequi.

** Sec. 23-38, Tallahassee Code, provides that it shall be unlawful for any person to commit any act which is or shall be recognized by the laws of the state as a misdemeanor. The penalty is a maximum fine of $500.00 or 60 days imprisonment or both.

> sembled . . . and shall, in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said [officer] shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present . . . when required by such [officer] to depart from the place, refuses or neglects to do so, he shall be deemed one of . . . the persons unlawfully assembled and may be prosecuted and punished accordingly."

The facts in the case are not in dispute and squarely present the question as to whether or not the conduct of the appellants was an exercise by them of rights they hold under state and federal constitutional provisions, which would preclude their prosecution, conviction and sentence for unlawful assembly in the trial court.

[fol. 318] The appellants are clergymen, two being rabbis and the others being ordained ministers of several Protestant denominations. They are residents of New Jersey, New York, Massachusetts or Connecticut. Some of them are of the white race and some are negroes. About June 12 or 13, 1961 they, together with eight other clergymen from the same general area, departed from Washington, D. C. by interstate common carrier bus for a so-called "Freedom Ride" into Virginia, the Carolinas, Georgia, and Florida. The bus ride terminated in Tallahassee June 15, 1961. The "Freedom Riders" left their buses at the Greyhound bus terminal there and went into the terminal lunch room to obtain food which was served them.

This trip was sponsored and at least partially financed by an organization known as C O R E (Congress on Racial Equality) which has been aggressive in promoting racial integration and desegregation. The trip was well publicized, having been given wide coverage in all news media including radio and television. The time and place of arrival in Tallahassee was heralded and well known.

The purposes of the "Freedom Ride", as stated by appellant Collier, who was the spokesman for the group, were two-fold: (1) To ascertain whether or not there were

facilities available on an integrated basis to interstate passengers in waiting rooms, in rest rooms, in eating facilities in the terminals through which they would pass; and (2) To bear witness as ministers, rabbis and clergymen to the struggle to obtain those rights "guaranteed us by the Constitution."

Shortly prior to the time the buses bearing the "Freedom Riders" were scheduled to arrive at about noon on June 15, there had gathered in the vicinity of the bus station a [fol. 319] number of persons and groups of persons. Law enforcement officers, including city police, had been dispatched to the area to prevent any disturbance. It was suspected that resentment against the "Freedom Riders" might result in some attempts at violence toward them or precipitate other disorders. When the buses arrived, law enforcement personnel moved in and gave protection to the passengers as they left the bus and entered the lunch room in the terminal. Apparently they were served in the lunch room under circumstances and policies satisfactory to them.

In approximately an hour after arrival at the bus terminal the eighteen "Freedom Riders" proceeded to the Tallahassee Municipal Airport ostensibly for the purpose of boarding a 3:25 P. M. Eastern Air Lines plane for passage to Washington, Newark, or New York. They were transported to the airport in private cars presumably furnished by local sympathizers with their objectives.

Upon arrival at the airport they found that the restaurant there had been closed. When the time approached for arrival of the 3:25 plane the ten appellants cancelled the reservation they had previously made for the flight. The other eight boarded the plane when it arrived and departed for their destinations in the East.

At that time, the airport arrangement provided separate waiting rooms, or areas, for white and negro; also separate rest rooms; and separate areas for serving food, the white area being a glassed-in place and the negro consisting of a counter with several stools. However, as mentioned before, the eating service had been discontinued by the closing of the restaurant facilities. A sandwich vending machine was in the lobby, but the prices on same had been marked up from previous prices.

[fol. 320] The appellants stayed together in a more or less compact group in the lobby area most of the time and no attempt was made to enforce separation of the races in the waiting room. Rest rooms were used by them without observing the designation of the segregated facilities.

After cancelling their reservations for the 3:25 P. M. flight they sought and ultimately obtained reservations for a flight the next morning at 8:25 on an E. A. L. plane. They remained in the airport until about 11:00 P. M. that evening for the purpose of observing if the restaurant would open and service be granted to them. The restaurant remained closed.

Law enforcement officers, including city police, were detailed to keep order. The activities and objectives of the appellants had been the subject of news reporting and groups of people were seen to be gathering or attempting to gather in the vicinity of the airport. There were critical and hostile comments made about the appellants. The police turned away some of those gathering when it was apparent such persons had no airport business or interest. Persons were even screened at the entrance and turned away by officers if they had no business to transact at the airport.

The chief of police advised the appellants that the airport terminal would close for the night at approximately 11:45 P. M. and a spokesman for appellants requested protection as they moved from the airport into the city and also on the return to the airport the next morning. Such protection by escort of law enforcement officers was provided.

The appellants thus left the airport at about 11:00 P. M. on the 15th to return the next morning prior to the scheduled departure at 8:25 A. M. of the plane on which they had obtained reservations. They were given escort security pro-
[fol. 321] tection on both the occasions of leaving and returning to the terminal.

The restaurant was also closed on the morning of June 16. At 8:15 A. M. all ten of the appellants cancelled their reservations for the 8:25 flight and remained in the waiting room after that flight had departed. At 8:20 A. M. they sought, and ultimately obtained, reservations on a National

Airlines flight scheduled to depart at 1:47 P. M. that day, but cancelled just prior to noon.

During these periods there continued to be movements and gatherings of groups of people in cars and there was a hostility and open resentment against the conduct and attitudes of the appellants. A considerable number of police, sheriff's deputies and highway patrolmen had been detailed to prevent disorder. City, county and state officials, including the Governor, were apprehensive and moved to provide necessary law enforcement personnel to preserve order.

At about 12:15 P. M., Mr. James Messer, Jr., city attorney of Tallahassee and a special police officer of the city, after conferring with the mayor and chief of police of the city, approached the appellants who were together and inquired if there was a leader of the group. Appellant Collier arose and identified himself and assumed to act as spokesman. Mr. Messer identified himself and his official positions, exhibiting his police badge. Others in the group gathered around Mr. Messer and Rev. Collier and Mr. Messer read to them a proclamation. He stated that the assembly of the appellants at the Municipal Airport of Tallahassee will tend to create a disturbance or incite a riot or disorderly conduct within the City of Tallahassee at its Municipal Airport over which the city had jurisdiction. He mentioned incidents of the previous night and fears of more unrest. [fol. 322] He then commanded them in the name of the state and city to immediately and peaceably disperse, and explained that such meant from the airport property. He then added that failure to so disperse would result in arrest for unlawful assembly. Collier asserted that they were interstate passengers, to which Messer replied that he did not consider them to be bona fide passengers in view of their reservation cancellations.

Several local sympathizers with the appellants dispersed, but appellants failed to do so. After about 1½ minutes, Mr. Messer turned to the Chief of Police and remarked "Chief, you can carry out your orders." The appellants were arrested and taken into custody.

The appellants take the view that the segregation practices with regard to waiting rooms, rest room facilities, and restaurant or eating facilities at the airport were viola-

tive of constitutional guarantees of equal protection of the law. They would also inject into the case the installation of sandwich and cigarette machines, at or just prior to their arrival, which inflated the prices of merchandise vended to double what it had been. The closing of the restaurant on the day of their arrival and its opening shortly after their departure is viewed as an important factor.

These facts are, in the view of this Court, not at all significant in the legal problems involved in the charge against the appellants and the disposition of such charge by the trial court.

The municipality of Tallahassee operates in a proprietary capacity and in a governmental capacity. Among its proprietary functions is the ownership and operation of a municipal airport and supervision over the concessions [fol. 323] there. Assuming, but not deciding, that its policies of segregation of the races in its facilities are unlawful and did constitute a violation of some duty to the appellants if enforced against them, and further assuming, without deciding, that the closing of the restaurant under the circumstances violated some duty to them, do such circumstances justify a concerted protest demonstration by appellants of their views and convictions over a protracted period of time during which tensions and tempers rise in the community which threaten to erupt into disorder and thus render the city, in its governmental capacity, powerless to terminate the demonstration in the exercise of its police power?

Stated another way, may not a lawful assembly for the purpose of protesting and demonstrating opposition to a course of policy practiced by the municipality become an unlawful assembly when pursued to unreasonable lengths imposing unreasonable burdens on others, after the lawful objectives of the demonstration had been fairly accomplished?

It is fundamental that our constitutions accord to the citizen of the United States the right of freedom of speech and of assembly and to peaceably petition for a redress of grievances. Such freedoms are jealously guarded and when exercised in good faith and in good order may not be lawfully interfered with by governmental action. However,

it is not a license to take into one's own hands the enforcement of law or by excessive harassment, effect coercion and acceptance of one's convictions and interpretations of legal rights by governmental entities whose policies are in conflict. Such procedures wholly ignore the very machinery provided by the constitutions and laws of the nation and state for the declaring, securing and enforcement of [fol. 324] constitutional and other legal rights. It is the courts, both state and federal, to whom resort is readily available for citizens to seek recognition and enforcement of legal rights and immunities. That such courts may not move as swiftly as the individual would wish does not authorize pursuit of personal means which unnecessarily create or threaten public disturbance or disorder, or which substantially interfere with normal, orderly functions of a public facility.

Such a procedure is a form of anarchy which, if it becomes an accepted practice, can have only the effect of seriously weakening orderly government.

The appellants, prior to the reading of the riot act to them, had achieved their announced objectives. They had observed both at the bus station and the airport the integration or lack of it of the waiting room, rest room and restaurant facilities. They had very effectively borne witness as clergymen and otherwise of their sympathy with the struggle to obtain desegregation of the various facilities of interstate travel.

To accommodate and facilitate those legitimate objectives the law enforcement agencies of city, county and state had given protection against potential violence or other disorder from groups or individuals who resented the activities of the appellants. This protection was afforded at the bus station, at the airport on the afternoon of June 15, on the evening of June 15 when the appellants left the airport to come into town and on the following morning when they returned to the airport purportedly to take an early plane. However, instead of using the reservations they had obtained they made a cancellation. This was thrice they had made last minute cancellations of reservations for the sole reason that they wished to eat in the restaurant, which was [fol. 325] closed. In the meantime their conduct and per-

sistence was arousing increased resentment and anger in the community with threats of violence and disorder toward the appellants.

Obviously, the conduct of appellants had revealed a pattern. They would make reservations for travel, wait in the lobby until just before the plane they were scheduled to take arrived and then cancel, make reservations on a later flight and then again cancel at the last minute, at all times remaining in the airport but never taking a plane. The effect is obvious. The seats and other facilities are occupied by them and their use denied to those who actually wished to travel. The use of rest rooms and wash rooms by them partakes more of lodging than a comfort feature for those whose sole purpose is some airport business. The reservation of space and last minutes cancellations prevented the use of that space of the flights involved, resulting in loss and inconvenience to the air line involved and probable denial to other would-be travelers of the use of that space. The sole purpose of such a course of harassment was to goad the municipality and its restaurant lessee to open the restaurant and gratify the appellants' wishes that they be served in the style and manner they deemed to be their right.

Controversies between citizens and governmental units are not unique. In nearly every instance there is a conflict in what the citizen contends he has a right to claim and the governmental entity which would deny the validity of such claim. The citizen may freely express his views and seek to cultivate converts to them with a view of bringing moral or political pressures on the officers of the public body to accord his demands. However, such means must [fol. 326] be exercised in a manner that is reasonable and not harmful to the rights of others or the peace and good order of the community. Especially is this true when the controversy is one of public interest in which there are strong and emotional feelings on the part of a substantial number of persons in the community.

The courts, both state and federal, are open to resolve controversies on constitutional issues in duly instituted and processed civil actions. Indeed, the very issue in the demonstrations of the appellants was subsequently pre-

sented to and adjudicated by the United States District Court for the Northern District of Florida. Brooks, et al. v. Tallahassee, 202 Fed. Supp. 56. When citizens press their demonstrations in behalf of a cause (however worthy they deem their objectives to be) beyond the bounds of fully and effectively delivering their message and reach the stage that they materially and harmfully interfere with the orderly business and lawful activities of others, who are acting in public or private capacities, then the conduct is disorderly and assembly for carrying it out is unlawful. Such was the case here.

The judgments appealed from are hereby affirmed.

Affirmed.

Ben C. Willis, Circuit Judge

[fol. 327] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 328]

SUPREME COURT OF THE UNITED STATES

No. 585—October Term, 1962

ISRAEL DRESNER, et al., Petitioners,

vs.

CITY OF TALLAHASSEE.

ORDER ALLOWING CERTIORARI—April 15, 1963.

The petition herein for a writ of certiorari to the Circuit Court of the State of Florida, Second Judicial Circuit is granted. Counsel are directed to brief and argue, in addition to the merits, the question of whether the judgment is supported by adequate state grounds.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

vs.

CITY OF TALLAHASSEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

TOBIAS SIMON and HOWARD W. DIXON
Attorneys for Petitioners
706 Ainsley Building
Miami 32, Fla.

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IN THE

Supreme Court of the United States

October Term, 1962

No. ———

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

vs.

CITY OF TALLAHASSEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, entered on August 16, 1962.

OPINIONS BELOW

Upon the conviction of the Petitioners in the Municipal Court of the City of Tallahassee, an appeal was taken to the Supreme Court of Florida. On November 1, 1961, the Supreme Court of Florida entered its opinion transferring the appeal to the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. That opinion was reported in 134 So.2d 228 (Fla. 1961) (Appendix A). The Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, affirmed the convictions below on August 16, 1962. An opinion was rendered but not reported. (Appendix B)

JURISDICTION

The judgment of affirmation of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, was pronounced on August 16, 1962. Jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C.A. §1257 (3).

Article V. Section 6 (3), of the Constitution of the State of Florida provides:

> "Section 6. Circuit Courts.—
>
> "(3) Jurisdiction. The circuit courts shall have . . . final appellate jurisdiction in all civil and criminal cases arising in the county court, or before county judges' courts, of all misdemeanors tried in criminal courts of record, and of all cases arising in municipal courts, small claims courts, and courts of justices of the peace . . . "

From the final judgment of affirmation by the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, after the taking of an appeal from the Municipal Court, Petitioners have no further appellate remedy under the Constitution and laws of the State of Florida.

QUESTION PRESENTED

Where a group of Negro and white citizens traveling in interstate commerce arrive at a municipally-owned and operated airport terminal with the publicly announced purpose of determining whether a restaurant and other public facilities in that terminal are available to Negroes on a racially unsegregated basis; and where said restaurant is segregated for the exclusive use of white persons; and where said group seeks food and drink at said restaurant but finds said restaurant closed to them; and where a hostile crowd, which resents the presence and the purposes of said group of Negro and white persons, gathers outside said terminal building; and where said group of Negro and white persons are peaceable and quiet in their words and conduct; and where police and other City officials arrest said group for unlawful assembly, but arrest no one in the hostile crowd; did the arrest and subsequent convictions of the members of said group constitute a denial of due process of law and equal protection of law, an abridgement of privileges and immunities, a denial of freedom of speech and assembly under the Fourteenth Amendment to the Constitution of the United States, a denial of rights under Article I, Section 8, Clause 3 (Interstate Commerce Clause) of the Constitution of the United States, as also a violation of 72 Stat. 737, 49 U.S.C.A. Sec. 1301 et seq (Federal Aviation Act of 1958).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Cited:

(1) The Fourteenth Amendment to the Constitution of the United States provides as follows:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizenship of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(2) The Interstate Commerce Clause of the Constitution of the United States (Article I, Section 8, Clause 3) provides as follows:

> "Section 8. The Congress shall have power to . . .
>
> "To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

(3) Article IV, Section 2, of the Constitution of the United States provides as follows:

> "Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Florida Constitution Cited:

Article V, Section 6 (3), of the Constitution of the State of Florida as above set forth.

Statutes Cited:

(1) F.S. 870.04 (Laws of Fla. 1961, c. 61-237) provides as follows:

> "870.04. Magistrate to disperse riotous assembly.
>
> "If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality, the sheriff or his deputies, or any constable or justice of the peace of the county, or the mayor, or any commissioner, councilman, alderman or police officer of the said city or municipality, or any officer or member of the Florida highway patrol, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the State command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such com-

mand, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly. As amended Laws 1961, c. 61-223, §1; Laws 1961, c. 61-237, §1."

(2) 72 Stat. 737, 49 U.S.C.A. Sec. 1301 is set forth below.

STATEMENT OF THE CASE

A. Petitioners, comprising a party of Negro and white clergymen, had set forth together from Washington, D. C., to cities in several southern States for the purpose of determining whether certain interstate transportation facilities were available on an integrated basis for persons of the colored race. Petitioners arrived at the Greyhound Bus terminal in Tallahassee on June 15, 1961, and were met by hostile persons who resented their presence and the purpose of their trip. At this time, Petitioners were protected by the local police from any violence. Petitioners procured airline tickets for their return trip to their final destination at New York, New York, and Newark, New Jersey, and then left the bus terminal for the City-owned and operated Tallahassee Municipal Airport preparatory to embarking upon their return flight, and they arrived at the airport in the early afternoon on June 15, 1961.

Upon their arrival, Petitioners sought to be served food and drink at the restaurant located in the terminal, the same being an integral part of the terminal facilities

designed primarily for service to passengers in interstate transportation. The Petitioners discovered, however, that this restaurant was closed to circumvent the necessity for service on a non-segregated basis. Petitioners decided to wait until the restaurant re-opened and in connection therewith they cancelled their reservations for their return trip. They waited in the terminal building until approximately 11:00 p.m. that evening and thereafter returned to the airport on the morning of June 16, 1961. The restaurant was still closed. Petitioners thereupon again cancelled their reservations and made new reservations for their return flight for later that day. While Petitioners were seated in the terminal building awaiting the opening of the restaurant, the City Attorney for the City of Tallahassee approached the Petitioners and demanded that they disperse. Petitioners declined to disperse, and they were thereupon arrested by the police and taken into custody.

The Petitioners' conduct was peaceable at the time of their arrival in Tallahassee, during the time they were at the bus terminal, while they were at the airport terminal, and at the time of their arrest; and at all times material to the matter herein they were quiet, dignified, and polite in their words and acts.

The Petitioners were charged as follows:

> "BEFORE ME, JOHN A. RUDD, Judge of the Municipal Court of the City of Tallahassee, Florida, personally appeared JAMES MESSER, JR., and EDW. J. HILL, who, being duly sworn, say that on, to-wit: the 16th day of June, 1961, upon property owned and operated by the City of

Tallahassee, Florida, and located in Leon County, Florida, namely, the Tallahassee Municipal Airport, ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN J. POLAND, JR., and PRISCILLA G. STEPHENS: COUNT I, Did then and there unlawfully assemble in that they did, and they being more than three (3) persons, meet together to commit a breach of the peace, acting together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace, and while so unlawfully assembled a police officer of said City did go among these persons so assembled, and making himself known to them and each of them, did, in the name of the State and City, command those so unlawfully assembled to immediately and peaceably disperse, and they and each of them did then and there refuse and/or neglect to obey such command when given, contrary to the laws and ordinances of said

City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida."

Petitioners moved to quash the aforesaid charges, but the said motions were denied. Following the trial, the Municipal Court of the City of Tallahassee found the Petitioners guilty of unlawful assembly as charged and ordered them to pay fines of $500.00 each or, alternatively, to serve sixty (60) days each in the City Jail. Petitioners thereupon filed an appeal in the Supreme Court of Florida. The Supreme Court of Florida ruled that it lacked jurisdiction to entertain the appeal and transferred the appeal to the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, said court having final appellate jurisdiction on all appeals from Municipal Courts in the State of Florida. The Circuit Court subsequently entered its order affirming the judgment of conviction of the Municipal Court.

B. Federal Questions Raised Below in the Trial Court and Before the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, having Appellate Jurisdiction.

The Federal questions were first raised prior to arraignment on the day of the trial when the Petitioners moved to quash and dismiss the charges on the grounds that they were being deprived of their rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, and that Chapter 61-237 (F.S. 870.04) was unconsitutional under the said provisions of the United States Constitution (Appendix C).

Subsequent to the convictions in the Municipal Court, the Petitioners appealed to the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. In their Assignments of Error, they again raised their defenses of denial of rights under the First and Fourteenth Amendments to the Constitution of the United States (Appendix D).

ARGUMENT

I.

Petitioners submit that their arrests and convictions violate the guarantees of due process of law contained in the Fourteenth Amendment to the Federal Constitution for the reason that there was no evidence whatsoever supporting a conviction for unlawful assembly.

In *Thompson v. City of Louisville*, 362 U.S. 199, 4 L.Ed.2d 654, 80 S.Ct. 624 (1960), the petitioner had been charged with loitering and with disorderly conduct arising out of his allegedly being "argumentative" with the police over his arrest. The United States Supreme Court reviewed the entire record and found that there was no evidence to convict the petitioner. The Court stated categorically that it is a "violation of due process to convict and punish a man without evidence of his guilt" (4 L.Ed.2d 654, 659). As to the charge of disorderly conduct, the Court noted that:

> "There is no testimony that petitioner raised his voice, used offensive language, resisted the officers or engaged in any conduct of any kind likely in any way to adversely affect the good

order and tranquility of the City of Louisville." (4 L.Ed.2d 654, 659)

This principle was re-affirmed by the United States Supreme Court in *Garner v. Louisiana*, 368 U.S. 157, 7 L. Ed.2d 207, 82 S.Ct. 248 (1961), wherein the Supreme Court set aside convictions of "sit-in" demonstrators who had been charged with unlawful assembly and which convictions were not based upon evidence to support the findings of any violations of the State's unlawful assembly statute.

In *Taylor v. Louisiana*, 370 U.S. 154, 8 L.Ed.2d 395, 82 S.Ct. 1188, the Supreme Court of the United States held that a State conviction for disturbing the peace was based on constitutionally insufficient evidence where proof showed only the entry of a Negro into a white waiting room at an interstate transportation facility.

II.

Petitioners submit that their arrests and convictions violate their freedom of speech and assembly as guaranteed under the due process clause of the Fourteenth Amendment to the United States Constitution. The announced purpose of Petitioners' trip was to determine whether restaurant and other facilities in interstate transportation terminals were available to Negroes on an unsegregated basis, and they peacefully assembled and peacefully demonstrated to communicate their opposition to the admitted practice of racial segregation.

Petitioners' activities are entitled to the same protection as that given to peaceful picketing, and their conduct

is protected by the principles announced by the United States Supreme Court in *Thornhill v. Alabama*, 310 U.S. 88, 84 L.Ed. 1093, 60 S.Ct. 736 (1940).

The conditions obtaining in the case at Bar have a striking analogue in the case of *Cooper v. Aaron*, 358 U.S. 1, 3 L.Ed.2d 5, 78 S.Ct. 1401 (1958), where the School Board of Little Rock, Arkansas, petitioned the Federal courts for delay in the program of school desegregation at that city's Central High School because of community hostility and violence towards Negroes. The Supreme Court of the United States refused to suspend the desegregation order and held that such violence did not afford a basis for denying the Negro students their civil rights. The Court stated that:

> "The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature (of Arkansas)."

In *Rockwell v. Morris*, 211 N.Y.S.2d 25, affirmed 215 N.Y.S.2d 502 (1961), cert den 368 U.S. 913, 7 L.Ed.2d. 131, 82 S.Ct. 194 (1961), the appellant, a self-styled American Nazi, ha dapplied for a permit to use a public park in New York City to make a public political speech and had been denied the permit on the ground that if he spoke it was "inevitable that public disorder and rioting will result" (211 N.Y.S.2d 25, 28). The New York Court, however, held that the denial of the permit was an unconstitutional prior restraint on freedom of speech. The Court was presented with a community situation much like that in the case at Bar. New York City, with two and one-half million Jews,

was obviously a hostile ambiance for a neo-nazi propagandist. Tallahassee, a city practicing apartheid in many respects, has been anything but hospitable to those who have urged a change in its attitudes in its race relations.

III.

The arrests and convictions of the Petitioners constitute an undue burden on passengers in interstate commerce in violation of the Interstate Commerce Clause (Article I, Section 8, Clause 3) of the United States Constitution under the principles announced by the Supreme Court of the United States in *Morgan v. Virginia*, 328 U.S. 373, 90 L. Ed. 1317, 55 S.Ct. 1050 (1946); *Edwards v. California*, 314 U.S. 160, 86 L.Ed. 119, 62 S.Ct. 164 (1941); *Boynton v. Virginia*, 364 U.S. 454, 5 L.Ed.2d 206, 81S.Ct. 182 (1960.)

IV.

The aforesaid arrests and convictions deprived Petitioners of one of the basic privileges and immunities of Federal citizenship, namely, the right to travel throughout the nation free of unreasonable restraint imposed by the States and unfettered by unlawful arrests. This right of national citizenship, guaranteed by Article IV, Section 2, of the United States Constitution, was announced by the Supreme Court long ago in *Crandall v. Nevada*, 73 U.S. 35, 18 L.Ed. 745 (1868), and was re-affirmed in *The Slaughter-House Cases*, 83 U.S. 36, 21 L.Ed. 394 (1873); *Twining v. New Jersey*, 211 U.S. 78, 53 L.Ed. 97, 29 S.Ct. 14 (1908).

V.

The arrests and convictions constitute state denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, because the police and city officials arrested the Petitioners who were peacefully demonstrating against unlawful racial segregation; instead of arresting a single one of the violent demonstrators outside the terminal; and this discriminatorily applied c. 61-237, Acts of Florida 1961 (F.S. 870.04) in contravention of the principles announced by the United States Supreme Court in *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L.Ed. 220, 6 S.Ct. 1064 (1886) and in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 6 L.Ed.2d 45, 81 S.Ct. 856 (1961).

The Petitioners' arrests and convictions for unlawful assembly, while interstate passengers awaiting service integrated service at the food counter which had previously been given to other interstate passengers only on a segregated basis, deprived them of equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. *Cooper v. Aaron*, supra, held that the petitioner's constitutional rights could not be annihilated by municipal or State officials. In *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 6 L.Ed.2d 45, 81 S.Ct. 856 (1961), the Supreme Court of the United States held that a restaurant owned by a municipality but leased to and operated by private persons cannot discriminate in the service of food to the public on the basis of color.

VI.

The arrests and convictions are invalid for the rea-

son that they are in conflict with the provisions of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C.A. Sec. 1301 et. seq.), and in particular Section 404 of said Act (72 Stat. 760, 49 U.S.C.A. Sec. 1374) which provides, in pertinent part, that:

> "No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

TOBIAS SIMON and HOWARD W. DIXON
Attorneys for Petitioners
706 Ainsley Building
Miami 32, Fla.

By _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has, pursuant to Rule 33 (1) of the Revised Rules of The Supreme Court of The United States, been served by mail upon EDWARD J. HILL, Attorney for Respondent, 216 East Jefferson Street, Tallahassee, Florida, by air mail this _____ day of November, 1962.

_____

APPENDIX A

[TITLE OMITTED]

OPINION OF THE SUPREME COURT OF FLORIDA

Filed November 1, 1961.

An Appeal from the Municipal Court, in and for the City of Tallahassee, John A. Rudd, Judge.

THORNAL, J.

We have for consideration a motion to dismiss a direct appeal from the Municipal Court of the City of Tallahassee.

We must decide whether this Court has jurisdiction to consider the appeal.

The City charged that the appellants did "unlawfully assemble . . . contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida." A trial in the municipal court culminated in a finding of guilt and a sentence to pay a fine with an alternative term in the city jail. At the outset of the trial the appellants moved to dismiss the complaint with the contention that Section 870.04, Florida Statutes, as amended by Chapter 61-237, Laws of Florida, 1961, was being invalidly applied against them. The City Judge announced that "the statute is not unconstitutional on its face." Coming here directly from the municipal court appellants contend that the trial judge passed directly on the validity of a state statute and that we, therefore, have jurisdiction pursuant to Section 4, Article V, Florida Constitution. The appellee's motion to dismiss questions the juris-

diction of this Court to determine the matter on a direct appeal. This motion has been argued and is now here for disposition.

The appellants were charged with the violation of the municipal ordinances of the City of Tallahassee. Nowhere in the complaint were they charged with a violation of a state statute. A reference to Section 870.04, supra, as amended, will reveal that the statute condemns a riotous assembly and provides a penalty under Section 870.02, Florida Statutes. The offense described in the statute is a misdemeanor triable in the state courts. The statute does not even impliedly define a municipal offense. This distinction is important in determining our jurisdiction. It is perfectly clear that the municipal judge was not confronted by the necessity of passing directly on the validity of a state statute. The most that could be said would be that he was called upon to pass upon the validity of a municipal ordinance. In actuality, the record indicates that he was merely requested to decide that "the statute" was invalid "as applied to the appellants." The real contention asserted before the trial judge questioned the application of the statute, rather than its fundamental validity.

This Court derives its appellate jurisdiction from Article V, Florida Constitution. By Section 4(2), Article V, supra, appeals from trial courts may be taken directly to this Court from certain specified types of judgments. Among these are "final judgments or decrees directly passing upon the validity of a state statute . . . or construing a controlling provision of the Florida or federal constitution . . . " We must look to this constitutional provision as the source of our jurisdiction to entertain the instant appeal.

It is clear that the trial judge, at most, was called upon to pass upon the validity of a municipal ordinance. This is so because the appellants were charged with a violation of the municipal ordinances, rather than with a violation of a state statute. We have long ago held under Section 4(2), Article V, supra, that this Court did not have the power to entertain a direct appeal from a judgment of a trial court which merely passes upon the validity of a municipal ordinance. For purposes of determining the jurisdiction of this Court, a municipal ordinance cannot be classified as a "state statute." Armstrong et al v. City of Tampa, Fla. 1958, 106 So. 2d 407. While conceivably a municipal court could be considered as a "trial court" from which a direct appeal could come here if in some peculiar situation the municipal court passed directly upon the validity of a state statute, such is not and could not have been the instant situation. Boyd v. County of Dade, Fla. 1960, 123 So. 2d 323. Moreover, even though the appellants attempted to question the validity of the application of the cited statute, they did not in any fashion assault the fundamental validity of the statute itself. Jurisdiction comes to us by direct appeal when the validity of the statute is assaulted and passed upon. When the problem involves the validity of the application of an otherwise valid statute, a direct appeal here is not available unless there be a final judgment or decree which construes a controlling provision of the State or federal constitutions. Stein v. Darby, et al., opinion filed October 11, 1961. In the instant case there was certainly no such construction. The final judgment of the municipal judge merely contained a finding of guilt and the assessment of the fine. Nowhere in the record is there a construction of the constitution. Armstrong v. City of Tampa, supra.

Although ordinarily motions of the type involved here would be disposed of without opinion, we deemed it appropriate to elaborate on our reasons for the future guidance of the Bar.

Finding as we do that this Court is without jurisdiction to hear the instant appeals, the motion to dismiss is well-taken. However, we will treat the motion as a motion to transfer an appeal improvidently lodged in this Court. Rule 2.la (5)(d), Florida Appellate Rules. Under Section 6, Article V, Florida Constitution, the circuit courts have jurisdiction to hear appeals from municipal courts when they involve questions such as those presented here. It is, therefore, ordered that within five days from the filing of this opinion all papers, records, briefs and other documents, including the notice of appeal, be and the same are hereby transferred to the Circuit Court, Second Judicial Circuit for appropriate disposition. Our opinion is not to be construed as in any fashion passing upon the merits of the appeal or the sufficiency of the record, including the notice of appeal. These are matters to be disposed of by the circuit court in the exercise of its appellate jurisdiction.

It is so ordered.

ROBERTS, C. J., HOBSON, DREW and O'CONNELL, JJ., concur

APPENDIX B

[TITLE OMITTED]

ORDER AFFIRMING JUDGMENTS OF THE CIRCUIT COURT OF LEON COUNTY, FLORIDA

This is an appeal from convictions in the Municipal Court of the City of Tallahassee, Florida of the ten appellants named in the caption who were charged with unlawful assembly. A fine was assessed against each of them with an alternate jail sentence.

The formal charge is in a single count naming the ten appellants and three others* as defendants and alleges an unlawful assembly on June 16, 1961 "in that, they being more than three (3) persons, met together to commit a breach of the peace, acting together and concertedly to occupy and continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace, and while so unlawfully assembled" were commanded by a police officer of the city, after identifying himself as such, to immediately and peaceably disperse, and they refused or neglected to do so.

*Of these three one was acquitted and the other two were granted a nolle prosequi.

The appellants contend that the judgments pursuant to convictions violate their rights guaranteed by the Florida and United States Constitutions in that they have been denied the equal protection of the laws and have been deprived of liberty or property without due process of law. They contend that the state statute, Chap. 61-237, Laws of 1961, (F. S. 870.04), (which, by reference adoption in a municipal ordinance,* is made an ordinance of the City of Tallahassee) is unconstitutional and void, either on its face or as it has been applied to the appellants in this case.

The pertinent portions of the statute, adopted as an ordinance, are:

> "If any number of persons . . . are unlawfully, riotously or tumultuously assembled in any . . . city or municipality . . . any . . . police officer of said city or municipality . . . shall go among the persons so assembled . . . and shall, in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said [officer] shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present . . . when required by such [officer] to depart from the place, refuses or neglects to do so, he shall be deemed one of . . . the persons unlawfully assembled and may be prosecuted and punished accordingly."

*Sec. 23-38, Tallahassee Code, provides that it shall be unlawful for any person to commit any act which is or shall be recognized by the laws of the state as a misdemeanor. The penalty is a maximum fine of $500.00 or 60 days imprisonment or both.

The facts in the case are not in dispute and squarely present the question as to whether or not the conduct of the appellants was an exercise by them of rights they hold under state and federal constitutional provisions, which would preclude their prosecution, conviction and sentence for unlawful assembly in the trial court.

The appellants are clergymen, two being rabbis and the others being ordained ministers of several Protestant denominations. They are residents of New Jersey, New York, Massachusetts or Connecticut. Some of them are of the white race and some are negroes. About June 12 or 13, 1961 they, together with eight other clergymen from the same general area, departed from Washington, D. C. by interstate common carrier bus for a so-called "Freedom Ride" into Virginia, the Carolinas, Georgia, and Florida. The bus ride terminated in Tallahassee June 15, 1961. The "Freedom Riders" left their buses at the Greyhound bus terminal there and went into the terminal lunch room to obtain food which was served them.

This trip was sponsored and at least partially financed by an organization known as C O R E (Congress on Racial Equality) which has been aggressive in promoting racial integration and desegration. The trip was well publicized, having been given wide coverage in all news media including radio and television. The time and place of arrival in Tallahassee was heralded and well known.

The purposes of the "Freedom Ride", as stated by appellant Collier, who was the spokesman for the group, were two-fold: (1) To ascertain whether or not there were

facilities available on an integrated basis to interstate passengers in waiting rooms, in rest rooms, in eating facilities in the terminals through which they would pass; and (2) To bear witness as ministers, rabbis and clergymen to the struggle to obtain those rights "guaranteed us by the Constitution."

Shortly prior to the time the buses bearing the "Freedom Riders" were scheduled to arrive at about noon on June 15, there had gathered in the vicinity of the bus station a number of persons and groups of persons. Law enforcement officers, including city police, had been dispatched to the area to prevent any disturbance. It was suspected that resentment against the "Freedom Riders" might result in some attempts at violence toward them or precipitate other disorders. When the buses arrived, law enforcement personnel moved in and gave protection to the passengers as they left the bus and entered the lunch room in the terminal. Apparently they were served in the lunch room under circumstances and policies satisfactory to them.

In approximately an hour after arrival at the bus terminal the eighteen "Freedom Riders" proceeded to the Tallahassee Municipal Airport ostensibly for the purpose of boarding a 3:25 P. M. Eastern Air Lines plane for passage to Washington, Newark, or New York. They were transported to the airport in private cars presumably furnished by local sympathizers with their objectives.

Upon arrival at the airport they found that the restaurant there had been closed. When the time approached for arrival of the 3:25 plane the ten appellants cancelled the reservation they had previously made for the flight.

The other eight boarded the plane when it arrived and departed for their destinations in the East.

At that time, the airport arrangement provided separate waiting rooms, or areas, for white and negro; also separate rest rooms; and separate areas for serving food, the white area being a glassed-in place and the negro consisting of a counter with several stools. However, as mentioned before, the eating service had been discontinued by the closing of the restaurant facilities. A sandwich vending machine was in the lobby, but the prices on same had been marked up from previous prices.

The appellants stayed together in a more or less compact group in the lobby area most of the time and no attempt was made to enforce separation of the races in the waiting room. Rest rooms were used by them without observing the designation of the segregated facilities.

After cancelling their reservations for the 3:25 P. M. flight they sought and ultimately obtained reservations for a flight the next morning at 8:25 on an E. A. L. plane. They remained in the airport until about 11:00 P. M. that evening for the purpose of observing if the restaurant would open and service be granted to them. The restaurant remained closed.

Law enforcement officers, including city police, were detailed to keep order. The activities and objectives of the appellants had been the subject of news reporting and groups of people were seen to be gathering or attempting to gather in the vicinity of the airport. There were critical and hostile comments made about the appellants. The police turned away some of those gathering when it

was apparent such persons had no airport business or interest. Persons were even screened at the entrance and turned away by officers if they had no business to transact at the airport.

The chief of police advised the appellants that the airport terminal would close for the night at approximately 11:45 P. M. and a spokesman for appellants requested protection as they moved from the airport into the city and also on the return to the airport the next morning. Such protection by escort of law enforcement officers was provided.

The appellants thus left the airport at about 11:00 P. M. on the 15th to return the next morning prior to the scheduled departure at 8:25 A. M. of the plane on which they had obtained reservations. They were given escort security protection on both the occasions of leaving and returning to the terminal.

The restaurant was also closed on the morning of June 16. At 8:15 A. M. all ten of the appellants cancelled their reservations for the 8:25 flight and remained in the waiting room after that flight had departed. At 8:20 A. M. they sought, and ultimately obtained, reservations on a National Airlines flight scheduled to depart at 1:47 P. M. that day, but cancelled just prior to noon.

During these periods there continued to be movements and gathering of groups of people in cars and there was a hostility and open resentment against the conduct and attitudes of the appellants. A considerable number of police, sheriff's deputies and highway patrolmen had been detailed to prevent disorder. City, county and state

officials, including the Governor, were apprehensive and moved to provide necessary law enforcement personnel to preserve order.

At about 12:15 P. M., Mr. James Messer, Jr., city attorney of Tallahassee and a special police officer of the city, after conferring with the mayor and chief of police of the city, approached the appellants who were together and inquired if there was a leader of the group. Appellant Collier arose and identified himself and assumed to act as spokesman. Mr. Messer identified himself and his official positions, exhibiting his police badge. Others in the group gathered around Mr. Messer and Rev. Collier and Mr. Messer read to them a proclamation. He stated that the assembly of the appellants at the Municipal Airport of Tallahassee will tend to create a disturbance or incite a riot or disorderly conduct within the City of Tallahassee at its Municipal Airport over which the city had jurisdiction. He mentioned incidents of the previous night and fears of more unrest. He then commanded them in the name of the state and city to immediately and peaceably disperse, and explained that such meant from the airport property. He then added that failure to so disperse would result in arrest for unlawful assembly. Collier asserted that they were interstate passengers, to which Messer replied that he did not consider them to be bona fide passengers in view of their reservation cancellations.

Several local sympathizers with the appellants dispersed, but appellants failed to do so. After about 1½ minutes, Mr. Messer turned to the Chief of Police and remarked "Chief, you can carry out your orders." The appellants were arrested and taken into custody.

The appellants take the view that the segregation

practices with regard to waiting rooms, rest room facilities, and restaurant or eating facilities at the airport were violative of constitutional guarantees of equal protection of the law. They would also inject into the case the installation of sandwich and cigarette machines, at or just prior to their arrival, which inflated the prices of merchandise vended to double what it had been. The closing of the restaurant on the day of their arrival and its opening shortly after their departure is viewed as an important factor.

These facts are, in the view of this Court, not at all significant in the legal problems involved in the charge against the appellants and the disposition of such charge by the trial court.

The municipality of Tallahassee operates in a proprietary capacity and in a governmental capacity. Among its proprietary functions is the ownership and operation of a municipal airport and supervision over the concessions there. Assuming, but not deciding, that its policies of segregation of the races in its facilities are unlawful and did constitute a violation of some duty to the appellants if enforced against them, and further assuming, without deciding, that the closing of the restaurant under the circumstances violated some duty to them, do such circumstances justify a concerted protest demonstration by appellants of their views and convictions over a protracted period of time during which tensions and tempers rise in the community which threaten to erupt into disorder and thus render the city, in its governmental capacity, powerless to terminate the demonstration in the exercise of its police power?

Stated another way, may not a lawful assembly for the purpose of protesting and demonstrating opposition to a course of policy practiced by the municipality become an unlawfully assembly when pursued to unreasonable lengths imposing unreasonable burdens on others, after the lawful objectives of the demonstration had been fairly accomplished?

It is fundamental that our constitutions accord to the citizen of the United States the right of freedom of speech and of assembly and to peaceably petition for a redress of grievances. Such freedoms are jealously guarded and when exercised in good faith and in good order may not be lawfully interfered with by governmental action. However, it is not a license to take into one's own hands the enforcement of law or by excessive harassment, effect coercion and acceptance of one's convictions and interpretations of legal rights by governmental entities whose policies are in conflict. Such procedures wholly ignore the very machinery provided by the constitutions and laws of the nation and state for the declaring, securing and enforcement of constitutional and other legal rights. It is the courts, both state and federal, to whom resort is readily available for citizens to seek recognition and enforcement of legal rights and immunities. That such courts may not move as swiftly as the individual would wish does not authorize pursuit of personal means which unnecessarily create or threaten public disturbance or disorder, or which substantially interfere with normal, orderly functions of a public facility.

Such a procedure is a form of anarchy which, if it becomes an accepted practice, can have only the effect of seriously weakening orderly government.

The appellants, prior to the reading of the riot act to them, had achieved their announced objectives. They had observed both at the bus station and the airport the integration or lack of it of the waiting room, rest room and restaurant facilities. They had very effectively borne witness as clergymen and otherwise of their sympathy with the struggle to obtain desegregation of the various facilities of interstate travel.

To accommodate and facilitate those legitimate objectives the law enforcement agencies of city, county and state had given protection against potential violence or other disorder from groups or individuals who resented the activities of the appellants. This protection was afforded at the bus station, at the airport on the afternoon of June 15, on the evening of June 15 when the appellants left the airport to come into town and on the following morning when they returned to the airport purportedly to take an early plane. However, instead of using the reservations they had obtained they made a cancellation. This was thrice they had made last minute cancellations of reservations for the sole reason that they wished to eat in the restaurant, which was closed. In the meantime their conduct and persistence was arousing increased resentment and anger in the community with threats of violence and disorder toward the appellants.

Obviously, the conduct of appellants had revealed a pattern. They would make reservations for travel, wait in the lobby until just before the plane they were scheduled to take arrived and then cancel, make reservations on a later flight and then again cancel at the last minute, at all times remaining in the airport but never taking a plane. The effect is obvious. The seats and other facilities

are occupied by them and their use denied to those who actually wished to travel. The use of rest rooms and wash rooms by them partakes more of lodging than a comfort feature for those whose sole purpose is some airport business. The reservation of space and last minute cancellation prevented the use of that space of the flights involved, resulting in loss and inconvenience to the air line involved and probable denial to other would-be travelers of the use of that space. The sole purpose of such a course of harassment was to goad the municipality and its restaurant lessee to open the restaurant and gratify the appellants' wishes that they be served in the style and manner they deemed to be their right.

Controversies between citizens and governmental units are not unique. In nearly every instance there is a conflict in what the citizen contends he has a right to claim and the governmental entity which would deny the validity of such claim. The citizen may freely express his views and seek to cultivate converts to them with a view of bringing moral or political pressures on the officers of the public body to accord his demands. However, such means must be exercised in a manner that is reasonable and not harmful to the rights of others or the peace and good order of the community. Especially is this true when the controversy is one of public interest in which there are strong and emotional feelings on the part of a substantial number of persons in the community.

The courts, both state and federal, are open to resolve controversies on constitutional issues in duly instituted and processed civil actions. Indeed, the very issue in the demonstrations of the appellants was subsequently presented to and adjudicated by the United States Dis-

trict Court for the Northern District of Florida. Brooks, et al v. Tallahassee, 202 Fed. Supp. 56. When citizens press their demonstrations in behalf of a cause (however worthy they deem their objectives to be) beyond the bounds of fully and effectively delivering their message and reach the stage that they materially and harmfully interfere with the orderly business and lawful activities of others, who are acting in public or private capacities, then the conduct is disorderly and assembly for carrying it out is unlawful. Such was the case here.

The judgments appealed from are hereby affirmed.

Affirmed.

BEN C. WILLIS
Circuit Judge

APPENDIX C

MOTION TO QUASH AND DISMISS PRIOR TO ARRAIGNMENT BEFORE THE MUNICIPAL COURT IN AND FOR THE CITY OF TALLAHASSEE, a Municipal corporation of Florida.

MR. SIMON: At this time, if your Honor please, the defense will move to quash and to dismiss the charges against these defendants on the following grounds:

First, that the charges of the City of Tallahassee do not state an offense against the defendants under the ordinances of the City of Tallahassee or the statutes of the State of Florida.

Second, the alleged offenses occurred beyond the city limits of the City of Tallahassee and this Court is without jurisdiction to try these offenses.

Third, the statute pursuant to which the defendants were arrested and with which the defendants are charged and which they are charged with having violated, namely Florida Statutes, Chapter 61-237, is invalid and is unconstitutional, constitutes a denial of rights under the Declaration of Rights of the Florida Constitution and constitutes a denial of rights under the Federal Constitution to the United States and the First and Fourteenth Amendments thereto and as a consequence these arrests were unlawful and the charges based thereon are without foundation.

Next, the defendants which constitute a party of Negroes and whites who were located in a municipally-

owned airport in the City of Tallahassee and were attempting to use the public facilities of this airport on a racially unsegregated basis acted at all times in a peaceful and dignified manner; their arrests constitute a denial to the defendants of the equal protection of the law under the Fourteenth Amendment to the Federal Constitution and a denial of due process of law, a denial of privileges and immunities of State citizenship guaranteed thereby; a denial of the privileges and immunities of Federal citizenship since they were at all times on and in an instrumentality of the municipality of Tallahassee and were attempting to use the facilities thereof, which facilities are required by Federal law to be made available to all citizens without regard to their race or color.

Next the defendants at the time of the arrests were passengers in interstate commerce awaiting departure at the Municipal Airport of Tallahassee of their plane from Tallahassee to points beyond the State of Florida and their arrests constitute a violation of their rights of unfettered travel free of racial discrimination under the Interstate Commerce Clause of the Federal Constitution, namely Article I, Section 8, Clause 3, and a violation of their privileges and immunities of Federal citizenship, a violation of the Federal Aviation laws and a violation of the Federal Aviation Act of 1958 and, in particular, Section 404 of said act, same being 72 Statute 760, 49 U.S. Code, Section 1374-B.

The arrests of the defendants and their prosecution constitute a violation of their liberty of contract as guaranteed by the Fourteenth Amendment to the Federal Constitution.

Next, the acts of the City officials in arresting and in participating in the arrests of these defendants and these prosecutions based thereon and the concomitant failure of the City officials to arrest certain other persons in the vicinity who were threatening to exhibit acts of violence because of the defendants' presence at the aforesaid airport and because of the defendants' endeavor to use the airport facilities on an unsegregated basis constitutes racial discrimination in violation of the due process clause —

THE COURT: Hold on a minute.

Are you making a motion, arguing a motion or are you testifying?

MR. SIMON: I am making a motion.

THE COURT: Leave out your facts and make the motion according to law.

MR. SIMON: (Continuing) —in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and corresponding provisions of the Florida Constitution whereby the defendants respectfully move this Court to quash and dismiss the information and charges herein filed.

APPENDIX D

ASSIGNMENTS OF ERROR.

1. The Court erred in entering its judgment against the defendants for the reason that the statute pursuant to which the defendants were arrested and which the defendants are charged with having violated, namely, F.S. Chapter 61— is invalid and unconstitutional and violates the rights of the defendants under the Florida and Federal Constitutions and denies to them the due process of law and the equal protection of laws and consequently, the defendants were unlawfully and illegally arrested and the charges placed against them were without foundation.

2. The Court erred in entering its judgment against the defendants for the further reason that the said arrests and charges constitute a denial to the defendants of the equal protection of the law under the Fourteenth Amendment to the Federal Constitution; a denial of due process of law guaranteed thereby; a denial of the privileges and immunities of State citizenship guaranteed thereby; and a denial of the privileges and immunities of Federal citizenship since the defendants were deprived of restaurant facilities in the Tallahassee Municipal Airport owned and operated as an instrumentality of the City of Tallahassee, by reason of their color or association with persons of color, and the said facilities were not made available to them without regard to their race or color.

3. The Court erred in entering its judgment against the defendants for the reason that the defendants were passengers in interstate commerce awaiting departure of their plane from Tallahassee to points outside the State

of Florida, and consequently the racially discriminatory arrests and prosecutions brought against the defendants, constitute a violation of their rights of unfettered travel free of racial discrimination under the Interstate Commerce Clause of the Federal Constitution (Article I, Section 8, Clause 3), a violation of their privileges and immunities of Federal citizenship, a violation of the Federal Aviation Laws, and a violation of the Federal Aviation Act of 1958, and in particular, Section 404 of said Act (72 Stat. 760; 49 U.S.C.A., Section 1374 (b)).

4. The Court erred in entering judgment against the defendants for the reason that the arrests of the defendants and their prosecution in view of the evidence constitutes a violation of their liberty of contract as guaranteed by the Fourteenth Amendment to the Federal Constitution.

5. The Court erred in entering its judgment against the defendants for the reason that the acts of the City officials in arresting and prosecuting the defendants who constituted a party of Negroes and persons in association with Negroes and who were peaceable, quiet, and dignified at all times, constitute patent racial discrimination by a municipality in violation of the due process clause and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in entering its judgment against the defendants for the reason that the same was contrary to the weight of the evidence.

7. The Court erred in entering its judgment against

the defendants for the reason that the same was contrary to law.

8. The Court erred in entering its judgment against the defendants for the reason that the arrests of the defendants and their subsequent trial and conviction by the Municipal Court in and for the City of Tallahassee constituted racial discrimination against the defendants by reason solely of their color or association with persons of color in violation of the obligations placed upon the States by the Fourteenth Amendment to the Constitution of the United States not to discriminate against any person or persons solely by reason of their color or associations with persons of color.

9. The Court erred in entering its judgment against the defendants for the reason that the arrests of the defendants by peace officers and public officials of the City of Tallahassee and the defendants' subsequent trial and conviction in and by the Municipal Court in and for the City of Tallahassee, constituted State aid of racial discrimination against the defendants by reason solely of their color or association with persons of color by a lessee-restauranteur (at the airport) of the City of Tallahassee, in violation of the obligations placed upon the States by the Fourteenth Amendment to the Constitution of the United States not to discriminate against any person or persons solely by reason of their color or association with persons of color, and also in violation of the Federal Aviation Act of 1958 and in particular, Section 404 of said Act (72 Stat. 760; 49 U.S.C.A., Section 1374 (b)), and in further violation of the obligations placed upon the City of Tallahassee, a Florida Municipal Corporation, by the provisions of F.S. 332.08 (3).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 585

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners

vs.

CITY OF TALLAHASSEE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

1. While the opinion of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, is not reported, a copy of the same is, however, included in the appendix hereto (Appendix C).

2. Upon conviction of the Petitioners in the Municipal Court of the City of Tallahassee, Florida, they erroneously filed an appeal in the Supreme Court of Florida. This improvident filing resulted in a transfer to the proper forum, viz, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. The opinion of the Supreme Court of Florida in this transfer was reported in (Fla. 1961) 134 So2d 228 (Appendix D).

CERTIFICATES BELOW

After entering of the Order Affirming Judgments, by the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, the Petitioners attempted to file this cause in the District Court of Appeal of Florida, First District. The Certificate of the Clerk of this Florida Court is filed in the record below, appended herein, reflecting the pertinent and essential data of jurisdiction in these proceedings. (Appendix E)

JURISDICTION

Jurisdiction of this Court is invoked by petitioners under 28 U.S.C.A., §1257. Respondent respectfully quotes the appropriate clause therefrom:

> "Final judgments or decrees rendered by *the highest court of a state in which a decision could be had*, may be reviewed by the Supreme Court as follows:"

JURISDICTION OF THE CIRCUIT COURT OF THE STATE OF FLORIDA

The Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, which affirmed the judgment of the trial court in this cause, is, along with the other circuit courts, a primary trial court in Florida and has final appellate jurisdiction of all cases arising in municipal courts. No appellate proceedings lie in such cases from the Circuit Courts.[1] The Supreme Court and the District Courts of Appeal have express power to issue writs of certiorari, a common law writ which issues in the sound judicial discretion of the Court to inferior courts. Writs of certorari do not take the place of appeals, but cause the entire record of the inferior court to be brought up by certified copy, for inspection, in order that the superior court may determine from the face of the record whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of the law to the material injury of petitioner, or in cases where no direct appellate proceedings are provided by law. *Malone vs. The City of Quincy*, 66 Fla. 52, 62 So. 922; *Davis, et al, vs. Strople* (Fla. 1949) 39 So.2d 468.

The judgment of the Circuit Court under the Florida Constitution is not final, and the Circuit Court is not the highest court in this state from which a decision can be had. Judgments of Circuit Courts are reversible by the District Courts of Appeal and by Florida's Court of last resort, the Supreme Court of Florida, where it can be shown that the Circuit Court has not proceeded according to the essential requirements of law

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[1] Article V, Sections 1, 3, 4, 5, and 6, Constitution of the State of Florida, are set out in Appendix A, infra. Article V is the judiciary article of the Florida Constitution, entitled Judicial Department.

to the material injury of petitioner. The validity of city ordinances is frequently tested in Florida in this manner. *Hunt vs. The City of Jacksonville*, 34 Fla. 504, 16 So. 398; *Mernaugh vs. City of Orlando*, 41 Fla. 433, 27 So. 34; *Malone vs. City of Quincy*, 66 Fla. 52, 62 So. 922, *Dons, et al, vs. Strople* (Fla. 1949).39 So.2d 468.

If there is a discretionary review by a higher State Court, the exercise of such discretion must be invoked. *Stratton vs. Stratton*, 239 U.S. 55, *Matthews vs. Huwe*, 269 U.S. 262, 265-6.

The jurisdiction statute, permitting this Court to review State Court cases by certiorari, relates only to final judgments rendered "by the highest court of a state in which a decision could be had." 28 U.S.C. §1257. A decision, in this case, could have been had in the District Court of Appeal of Florida, First District *and* in the Florida Supreme Court by writ of certiorari.

Petitioners, for reasons not set forth in their brief, include in their Appendix A, the opinion entitled, *Israel Dresner et als, Appellants, v. City of Tallahassee, Appellee* (Fla. 1961) 134 So.2d 228. In order that this Court not be led to believe that this cause has already proceeded to the highest court of this State, it is appropriate here to show the attempt to lodge this case with the Florida Supreme Court in 1961. Appellants contended there and then that the trial Judge had passed directly on the validity of a state statute, and thereby moved the appellate jurisdiction of this cause to the Florida Supreme Court. That Court held this to be an erroneous assignment by appellants, and treated appellee's motion to dismiss the appeal as a motion to transfer an appeal improvidently invoked, pursuant to Rule 2.1(a)(5)(d) Florida Appellate Rules. (Appendix B) The Court stated flatly:

"Our opinion is not to be construed as in any fashion passing upon the merits of the appeal or the sufficiency of the

record, including the notice of appeal. These are matters to be disposed of by the circuit court in the exercise of its appellate jurisdiction." (134 So. 2d 228, 230).

Petitioners cannot circumvent the review of the District Court of Appeal of Florida, First District, and the Florida Supreme Court by improvidently lodging their cause in the highest court of a State and, when transferred to the proper court having jurisdiction, claim that the cause has already been there for review. Petitioners' statement (Brief—9) that "The Supreme Court of Florida ruled that it lacked jurisdiction to entertain the appeal . . ." is only a half-statement, and when read in the full light and context of the opinion (Appendix D) will reveal the true nature of the transfer by the Supreme Court of Florida to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida. This language from Petitioners' brief is not fully revealing and leads this Court away from the improvident filing of this cause in the wrong court, and the transfer to the proper forum for appellate review. The essential requirements of law require that petitioners proceed according to the essential requirements of law.

Petitioners, fail to reveal to this Court that they later made an abortive attempt to proceed somewhat properly in this cause. They, on October 16, 1962, attempted to file in the District Court of Appeal of Florida, First District, their petition for writ of certiorari. This petition, arriving in the hands of the Clerk on October 16, 1962, one day late and absent the requisite filing fee, was then returned to the petitioners at their request. The certificate of the Clerk of this Florida District Court shows that even if accompanied by the filing fee, the earliest date of filing would have been the sixty-first (61st) day. Respondent hereby shows that Petitioners petition for writ of certiorari was then beyond the time allowed, and the District Court of Appeal was then and thereby without jurisdiction to

entertain the application, pursuant to Florida Appellate Rules (Appendix B) and applicable case law. *Harris v. Condermann*, (1959 Fla) 113 So. 2d 235.

The order of the Circuit Court, affirming the judgments herein sought to be reviewed, was entered on August 16, 1962, as shown in Petitioners' brief (Brief—2), under the "OPINIONS BELOW". On page 16 of Petitioners' Appendix B the date of this order of affirmance is not shown, but Respondent's Appendix C, the order affirming, clearly shows and thereby gives notice of the commencement of the time to begin review proceedings. "Within 60 days" as required by Florida Appellate Rule 4.5.c(1), when computed, made October 15, 1962 the last day that their petition could be "filed in the court". Rule 3.18, Florida Appellate Rules, (Appendix B), provides for the computation of time. October 15, 1962 is not a Saturday, Sunday or a legal holiday, nor is the period of time prescribed or allowed less than 7 days.

Respondent urges that Petitioners cannot circumvent the review of the higher courts of this State by delay and the allowance of prescriptive time to lapse. Again, Respondent says that the essential requirements of law require that Petitioners proceed according to the essential requirements of law.

Respondent urges on this court the fact that this cause is the third attempt to bypass the highest appellate courts of the State of Florida and to have this Court grant certiorari to the Circuit Court of the Second Judicial Circuit of Florida. See:

No. 783. LEONARD D. SPEED, Joseph Spagna and Johnny Herndon, Petitioners, v. CITY OF TALLAHASSEE, FLORIDA
356 US 913, 2 L Ed 2d 586, 78 S Ct. 670.
March 17, 1958. Petition for Writ of Certiorari to the

Circuit Court of Florida, Second Judicial Circuit, denied.

and

No. 671. HENRY M. STEELE, William Haywood Larkins, Patricia Gloria Stephens, Priscilla Gwendolyn Stephens, Angelina Nance, Barbara Joan Broxton, John Anglish Broxton and Clement Collier Carney, Petitioners, v. CITY OF TALLAHASSEE, Respondent, and ROBERT J. ARMSTRONG, Roland W. Eves, Derek Spencer Lawler and John J. Poland, Petitioners, v. CITY OF TALLAHASSEE, Respondent

365 US 834, 81 S Ct 748, 5 L Ed 2d 745

March 6, 1961. Petition for Writ of Certiorari to the Circuit Court of Florida, Second Judicial Circuit, denied.

Mr. Justice Harlan in *Garner v. Louisiana* 368 U.S. 157, 7 L, Ed. 2d 207, 82 S. Ct. 348 (1961) in referring to *Thompson v. Louisville*, 362 U.S., 199, 4 L. Ed. 2d 654, 80 S. Ct. 624 (1960) says:

> "Thompson v. Louisville should be recognized for what it is, a case involving a situation which, I think it fair to say, was unique in the annals of the Court. The case is bound to lead us into treacherous territory, unless we apply its teaching with utmost circumspection, and with due sense of the limitations upon our reviewing authority." (7 L.Ed. 2d 207, 230-1)

What more can be said of Petitioners who have failed to exhaust their state remedies, have had no final judgment or decree rendered by the highest court of this state in which a decision could be had, has improvidently lodged its appeal in the wrong court of a state, and has allowed its time to expire for petition for certiorari in the proper state courts. To ask this Court for review is to ask it to take jurisdiction after Petitioners are in default below.

It is, therefore, respectfully submitted that until the Petitioners have exhausted their state remedies by seeking review of

the judgment of affirmance entered by the Circuit Court of Leon County, Florida, by *first* the District Court of Appeal of Florida, First District and *second* by the court of last resort of the State of Florida, namely, the Supreme Court of Florida, then under the provisions of 28 U.S.C. §1257, this Court will not entertain this petition for certiorari.

QUESTIONS PRESENTED

1. Where ten persons assemble together pursuant to a prearranged concert, even though such place of assembly be within a public transportation facility, and demonstrate to protest an imagined or fancied discrimination against them in such fashion as to inspire well-grounded fear in persons of reasonable courage in the community to fear that there would be breaches of the peace and that they would excite alarm and fear, may not municipal officials under provisions of law permitting them to order the dispersal of an unlawful assembly, order those assembled to disperse, and upon failure to disperse to arrest them?

2. Where ten persons purchase airline tickets, but pursue a program of cancelling reservations within minutes of plane departure time, which automatically cancels the tickets also, and they do this over an extended period of time, thereby disrupting the orderly operation of franchised and licensed airlines and the probable denial of the space to other would-be travellers, may they then say that they are *bona fide* passengers in interstate commerce and avail themselves of the protections of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C.A. §1301 et seq.)

Respondent urges Question 1 be answered affirmatively; that Question 2 be answered negatively.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent does not believe that any Federal constitutional questions are involved, and contends that the petition for certiorari would have this Court sift through evidence presented to a trial court and determine whether or not the acts of Petitioners were sufficient to sustain the convictions by the Municipal Court of the Respondent city.

Respondent believes that this petition is merely an attempt to obtain another hearing after being defeated in the trial court below.

STATEMENT OF THE CASE

Petitioners, a group of clergymen from Connecticut, New York, New Jersey and Massachusetts, and representative of several races and religious denominations, met together at Washington, D.C. for the purpose of participating in what was then currently known as a "freedom ride," or at least the participants were called "Freedom Riders." Their avowed objective was to test the segregation and/or integration aspects of facilities afforded them in several cities in the southeastern states, one of which was Tallahassee, Florida.

Petitioners travelled by Greyhound Bus from a point of departure in Washington, D. C., to terminate in Tallahassee, Florida, and were to return north via Eastern Air Lines.

Petitioners, and other members of their party, arrived at Tallahassee Greyhound Bus Terminal about 11:30 A.M., June 15, 1961, pursuant to advance information and publicity. In anticipation of the circumstances herein calculated to excite alarm in this community and the danger to the tranquility and peace of the neighborhood, sufficient protection was provided at this bus

station in the form of city police, highway patrolmen, sheriff's office and sheriff's bureau representatives. A large crowd gathered shortly after the arrival of the freedom rider group and in the opinion of the City Attorney, there was the possibility of danger to the peace and tranquility of the neighborhood at that time. The crowd was ordered to disperse, and it did; the Petitioners ate and finished eating about 2:20 P.M. and departed to the municipal airport to enplane according to their reservations at 3:25 P.M.

At this point, it seems appropriate to call to the attention of this Court that the initial group of these so-called "Freedom Riders" was eighteen in number and that eight of them departed Tallahassee as pre-arranged. The remaining ten (Petitioners here), construing that they had been denied entrance to the Tallahassee airport restaurant, cancelled their existing airline reservations and remained to be served at a time when the restaurant would re-open.

Finding the airport restaurant closed for repairs, these Petitioners elected to stay in the vicinity of this restaurant until it should open. Repairs were not completed immediately, in fact were not completed for several days, during part of which time these Petitioners continued to remain in the adjacent airport waiting room, making and cancelling airline reservations on the following schedule:

(a) June, 15, 1961, Thursday, Eastern Air Lines Flight #268 to leave Tallahassee 3:45 P.M. All eighteen (18) freedom riders ticketed and confirmed. Petitioners held tickets, but cancelled prior to departure.

(b) June 16, 1961, Friday, Eastern Air Lines Flight #954 to leave Tallahassee 8:38 A.M., this space requested the previous day after 3:45 P.M. Confirmed as to all

appellants at 8:35 P.M. on the 15th. Petitioners would not surrender tickets for correct ticketing. They cancelled their reservations at 8:15 A.M., June 16, 1961, prior to departure of the flight at 8:38 A.M.

(c) June 16, 1961, Friday, National Air Lines Flight #362 to leave Tallahassee 1:49 P.M., confirmed as to all appellants at 8:20 A.M. Petitioners *not* ticketed and cancelled their reservations about 12:00 Noon.

In summation it can be seen that Petitioners, during the dates of June 15 and 16, 1961, held cancelled tickets on Eastern Air Lines departing Tallahassee to New York or Newark, New Jersey. They cancelled Eastern Air Lines Flight #268 on the 15th just prior to departure, and they cancelled Eastern Air Lines Flight #954 fifteen minutes prior to departure. Their tickets were automatically cancelled when their reservations were cancelled for a particular flight. Petitioners *held no tickets* on National Air Lines.

Petitioners continued to occupy the airport waiting room facilities under the protection of the law enforcement agencies of the City, Leon County and the State. This protection was requested and given. At near midnight on the 15th of June, 1961, the airport was closed and the Petitioners returned to Tallahassee under police protection which they had requested, to spend the night, returning to the airport early the next morning, ostensibly to board Eastern Air Line's Flight #954 departing at 8:38 A.M. The restaurant was still closed for repairs. Petitioners state that they were denied entrance to the restaurant facility, but this was no denial to them; in fact, there were no persons admitted to this restaurant during the period. It was closed to all persons.

As the morning of June 16, 1961 progressed, it became apparent to persons of long and comprehensive experience in

the law enforcement field, that the continued activity of the Petitioners in the airport waiting room was tending to create a disturbance or incite a riot or disorderly conduct.

On June 16, 1961, at approximately 12:20 P.M., James Messer, Jr., a Special Police Officer of the City of Tallahassee, informed the Petitioners that their assembly would tend to create a disturbance or incite a riot or disorderly conduct, and, therefore, he commanded them to immediately and peaceably disperse. They refused to obey the order. After being assured that his command had been heard by those assembled, and when it became obvious that they did not intend to comply with the command, they were placed under arrest.

During the entire period while Petitioners were in Tallahassee, they were adequately protected from any hostile acts by any person or persons. However, they arrived in this City with the avowed purpose to "test" imaginary or imagined discriminatory acts or practices, and they had a common intent to attain this purpose, whether the same was done lawfully or unlawfully. Respondent holds, and urges, that the same was done in such a manner as to cause sane, firm and courageous persons in this community to apprehend a breach of the peace.

The Petitioners were charged as follows:

"BEFORE ME, JOHN A. RUDD, Judge of the Municipal Court of the City of Tallahassee, Florida, personally appeared JAMES MESSER, JR. and EDW. J. HILL, who being duly sworn, say that on, to-wit: the 16th day of June, 1961, upon property owned and operated by the City of Tallahassee, Florida, and located in Leon County, Florida, namely, the Tallahassee Municipal Airport, ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR.,

RALPH L. ROY, CHAS. A. HUNTER, JOHN J. POLAND, JR., and PRISCILLA G. STEPHENS: COUNT I, Did then and there unlawfully assemble in that they did, and they being more than three (3) persons, meet together to commit a breach of the peace, acting together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage of riot, or other breaches of public peace, and while so unlawfully assembled a police officer of said City did go among these persons so assembled, and making himself known to them and each of them, did in the name of the State and City, command those so unlawfully assembled to immediately and peaceably disperse, and they and each of them did then and there refuse and/or neglect to obey such command when given, contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida."[2]

At the trial on the charges as set forth, the Municipal Court of the City of Tallahassee, Florida, found petitioners guilty of unlawful assembly as charged. They, and each of them, were sentenced to pay a fine of $500.00 or in the alternative to serve sixty (60) days in the City Jail. Petitioners erroneously filed an appeal in the Supreme Court of Florida which was transferred to the proper court for appellate review, viz: The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, the said court having appellate jurisdiction of appeals from Municipal Courts in Florida. This Circuit Court affirmed the judgment of conviction of the trial court below.

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[2] Chas. A. Hunter, John J. Poland, Jr., and Priscilla G. Stephens are not petitioners here.

Thereupon, petitioners attempted to file for certiorari in the District Court of Appeal of Florida, First District. This petition, filed late, was returned to petitioners upon request.

They now seek review here.

ARGUMENT

1. Certiorari is not granted to review facts.

The decisions of the Court below are correct and there is no basis for further review. As this Court stated: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston* 268 U.S. 220, 227. Certiorari is not granted "merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co. v. Coty*, 262 U.S. 159, 163.

2. The petitioners were arrested and convicted of the offense of unlawful assembly.

Meetings attended with circumstances calculated to excite alarm are unlawful. *Regina v. Neal*, 9 Carrington and Payne (English) 431.

Meetings assembled under circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquility and peace of a neighborhood are unlawful assemblies. *Regina v. Vincent*, 9 Carrington and Payne (English) 91.

At common law, assemblies may become unlawful alone by the manner of them, as by such circumstances of terror as tend to endanger the public peace and excite fear, alarm, and consternation among the people. There need be no common pur-

pose except as might be implied by assembling in such manner, and which might be either lawful or unlawful. *State v. Butterworth*, (N. J.) 139 Atlantic 161.

Assemblies of the requisite number of persons who conduct themselves so as to cause persons in the neighborhood to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultously, are unlawful. *Aron v. City of Wausau*, 74 N. W. 354, 98 Wis. 592, 40 L.R.A. 733.

Assemblies that contemplate injury to the rights of others are held unlawful. *Ex parte Jacobson*, 115 S.W. 1193, 55 Tex. Cr. R, 237.

In *Lair v. State* (Okla) 316 P. 2d 225 the Court noted that no civilized government could permit the practice of unlawful assemblies (referring specifically in the opinion to the practice of gentry on bad terms with each other going at each other with bands of armed retainers), the consequence being that the bands would probably fight, and certainly the people would fear that they would fight. The court further noted it was immaterial whether the object which those assembled had in view was lawful or unlawful if the intent were to affect the object of the assembly in such manner as to give firm and courageous persons in the neighborhood ground to apprehend a breach of the peace in consequence of it. (Citing 91 C.J.S. Unlawful Assembly §29, b, p. 496; *State v. Woolman* 84 Utah 23, 33 P. 2d 640, 93 A.L.R. 723; *State v. Butterworth* 142 A. 57)

3. The Respondent distinguishes *Taylor v. Louisiana* 370 U.S. 154, 8 L.Ed. 2d 395, 82 S.Ct. 1188 by quoting directly from Petitioners' Brief (p. 11) where they said "————where proof showed only the entry of a Negro into a white waiting room at an interstate transportation facility." Citing further from *Taylor*, this Court said: "The trial court said, however,

that the mere presence of Negroes in a white waiting room was likely to give rise to a breach of the peace." (8 L.Ed. 2d 395, 397) Petitioners in this cause were not arrested merely for their *presence*, but for unlawful assembly. Unlawful assembly, by statute and by definition, arises when persons are unlawfully assembled or when a lawful assembly becomes unlawful, under such circumstances as to cause, or inspire, a well-grounded fear in persons of reasonable courage in the community that there would be a breach of the peace or the creation of a disturbance. In *Taylor* we find merely restless persons and onlookers climbing onto seats to get a better view. This is not the instant case.

4. In *Thompson v. City of Louisville*, 362 U.S. 199, 4 L.Ed. 2d 654, 80 S.Ct. 624 (1960) Respondent distinguishes from the instant case because this Court found (4 L.Ed. 2d 654, 657) "———— police court fines of less than $20.00 on a single charge are not appealable or otherwise reviewable in any other Kentucky court ————." This Court is familiar with *Thompson*, in full, and the manner in which it proceeded through the Kentucky court system, and finally deciding that Thompson's fines were not appealable and would be satisfied by his serving the requisite time in jail, all before he could prepare and file his petition for certiorari. Petitioners here have not sought, nor do they now seek, the exhaustion of state remedies afforded them in the Florida courts and required of them by this Court before being reviewed herein. (28 U.S.C., §1257)

5. Petitioners cite *Morgan v. Virginia*, 328 U.S. 373, 90 L. Ed. 1317, 55 S.Ct. 1050 (1946) *Edwards v. California*, 314 U.S. 160, 86 L.Ed. 119, 62 S.Ct. 164 (1941) and *Boynton v. Virginia*, 364 U.S. 454, 5 L.Ed. 2d 206, 81 S.Ct. 182 (1960) in that arrests and convictions of those certain Petitioners constitute an undue burden on passengers of interstate commerce in violation

of the Interstate Commerce clause (Article I, Section 8, Clause 3) of the United States Constitution under principles announced by this Court in these above cases. Respondent contends that Petitioners herein were not passengers in interstate commerce. In the event that this record suggests that these Petitioners were, at any one time, passengers in interstate commerce, Respondent urges that at the time of their arrest, they were then and there *not* passengers in interstate commerce, and the overall pattern of the activity, herein specified to be an unlawful assembly, indicates that any attempt to claim that they were passengers in interstate commerce constitutes and constituted a sham. Such sham claims are not sufficient grounds for this Court to grant certiorari. In *Boynton v. Virginia,* Mr. Justice Black, in delivering the opinion of this Court, says in his lead paragraph: (5 L.Ed. 2d 206, 208) "The basic question presented in this case is whether an interstate bus passenger is denied a federal statutory or constitutional right———." This establishes the interstate passenger aspect of the Petitioner Boynton but no such showing is created in this record. Respondent respectfully calls attention to the schedule of making and breaking of reservations shown herein. In *Boynton,* Petitioner was instructed to leave the white portion of the restaurant and was advised that he could be served in the colored portion, whereas, in the instant case, Petitioners were not denied service purely on the basis of the color of any of them, as the restaurant was closed to all persons and no denial, per se, was created or experienced. Again, in *Boynton,* Petitioner exhausted his state remedies by appealing his cause to the Virginia Supreme Court. This Court says that "We granted certiorari because of the serious federal questions raised concerning discrimination based on color." (5 L.Ed. 2d 206, 209) Petitioners in this cause are both white and colored and there was no discrimination based on color.

6. Petitioners' Brief (p. 13) states that they are deprived of one of the basic privileges and immunities of federal citizenship,

namely, the right to travel throughout the nation free of unreasonable restraint imposed by the states and unfettered by unlawful arrest; however, the leading case of *Crandall v. Nevada* (73 U.S. 35, 18 L.Ed. 745 (1868) relates to the State of Nevada imposing a tax for each and every person conveyed or transported from the State. This court held that all of the citizens of the United States are members of the same community and must have the right to pass and repass through every part of it without interruption, as freely as in their own states. Respondent fails to see the correlation or connection between taxing interstate commerce passengers in one state and the unlawful assembly of persons within the limits of a given state under the conditions set forth herein.

7. Petitioners seek comfort in *Garner v. Louisiana,* 368 U.S. 157, 7 L.Ed. 2d 207, 82 S.Ct. 248 (1961) relating to (1) a sit-in demonstration, (2) Louisiana's unlawful assembly statute, (3) Negroes sitting at white lunch counters, (4) refusal of the Negroes to move upon orders, (5) testimony by the State that Petitioners "were disturbing the peace by sitting there." This Court held that it found "———the record barren of any evidence that would support a finding that the petitioners' conduct would even 'foreseeably' have disurbed the public, ———"; (7 L.Ed 2d 207, 215) where in the instant case, the statutory requisite number of persons did meet together, did excite alarm, did endanger the public peace, did excite fear, all and in such nature as to inspire *well-grounded* fear in persons of reasonable courage, of riot, or other breaches of the peace, and the record here is *not barren* of these findings.

Mr. Justice Harlan concurred in this reversal of convictions, due to "implied consent of the management." (7 L.Ed. 2d 207, 234) He said the Petitioners' (Garner and Hoston) conduct could not be punished under the state's *general* breach of the peace statute, and all three Petitioners' convictions must fall

because Louisiana's statute was vague and uncertain, so much as to be unconstitutional. This vagueness and uncertainty cannot apply to the instant case.

Mr. Justice Douglass concurred in the reversal of all convictions, referring in his opinion to policies of segregation. Segregation is not the problem here, as is seen from the record. This is unlawful assembly. Using the terms of the common man, these petitioners were served on an integrated basis in the restaurants wherever they went (even the local bus station restaurant); but in the final demonstration against the imaginary aggrievement of a closed restaurant, they never were able to show anyone that there was discrimination, and the record is devoid of such evidence. Further, these instant Petitioners were not all Negroes, all of one religion, of one height, shape or weight. This is an heterogeneous assembly of persons, unlawfully assembled according to all unlawful assembly concepts, convicted with adequate evidence of guilt, with a fair and public trial; and finally appealed to the next state court of review, and affirmed. The announced purpose of Petitioners' trip failed at the leased airport restaurant in Tallahassee, finding it neither "integrated," nor "segregated," but closed for repairs to all persons, and over an extended period of time.

8. Judge Ben C. Willis, Circuit Judge, in affirming the trial court in these convictions, says these facts "——— squarely present the question as to whether or not the conduct of the appellants (Petitioners) was an exercise by them of rights they hold under state and federal constitutional provisions which would preclude their prosecution, conviction and sentence for unlawful assembly ———." Judge Willis asks the question, may not a lawful assembly become an unlawful assembly when pursued to unreasonable lengths that impose unreasonable burdens on others, *after the lawful objectives* have been fairly accomplished. Judge Willis' opinion states that he deemed the

sole purpose of these Petitioners to be a course of harrassment, to goad the municipality and its restaurant lessee to open the restaurant and gratify their wishes that they be served in a particular style, not reflected by the record, but apparently deemed to be their right. The record is absent the ability of the municipality or the restaurant lessee to open the restaurant had they so desired. Petitioners might have rightly assumed that the restaurant would eventually be opened to them and to the public again, at which they could lawfully assemble and their desires be gratified.

The local activity of these Petitioners, in Tallahassee, followed closely on the heels of other so-called "Freedom Rider" groups in other parts of this country. The consequences of some of these so-called "rides" is well known. Justice Field, who wrote the opinion in *Beatty v. Gillbanks* 47 L.T. Rep. N.S. 194, 15 Cox C.C. 138, 9 Q.B. 308 (1882) said:

> "Now, without doubt, as a general rule it must be taken that every person intends what are the natural and necessary consequences of his own acts, and if in the present case it had been their intention, or if it had been the natural and necessary consequence of their acts, to produce the disturbance of the peace which occurred, then the Appellants would have been responsible for it, and the magistrates would have been right in binding them over to keep the peace." (15 Cox C.C. 138, 145)

We hold herein, and pursuant to the opinion just recited, that these Petitioners knew of the consequences of their acts, knew of the excitement and alarm that would be attendant to their further activity, and though their assembly at one time may have been lawful, and fully protected by Respondent, the continued activity as set forth in this record reveals that the assembly became unlawful and it was the duty and responsibility pursuant to the opinion of those persons charged with said responsibility that such assembly be dispersed.

The concerted action of these Petitioners, as reflected by this record, indicates a desire on their part to remake the law according to their own desires, spurred on by imaginary discriminations. Quoting from the opinion in *The Oakmar*, D. C., 20 F. Supp. 650 (1937), the Court said about those persons who desire to make over the law:

> "They (such theories) emanate from those persons who lack that self-control which enables men to abide the slower processes of orderly government instead of yielding to that impatience which, if not restrained, will ultimately destroy the fundamental rules for human freedom upon which our form of government is based."

Citing again from the opinion by Judge Willis, (Appendix C) he says;

> "Such a procedure is a form of anarchy which, if it becomes an accepted practice, can have only the effect of seriously weakening orderly government."

9. *Burton v. Wilmington Parking Authority* 365 U.S. 715, 6 L.Ed. 2d 45, 81 S.Ct. 856, (1961), is distinguished from the instant case because Burton was "refused—food or drink solely because he is a Negro," and the Supreme Court of Delaware held that lessee (restaurant) was acting within the contemplations of an applicable Delaware statute denominating lessee as not being "required (under Delaware law) to serve any and all persons entering its place of business." (6 L.Ed. 2d 45, 47) The Supreme Court of Delaware dismissed the appeal; hence the writ issued by this Court. Further, the *Wilmington Parking Authority* had power to determine the rates and charges for the services provided by the facility.

Again, arguendo, Appellant Burton had exhausted his state remedies before seeking appeal or certiorari, contra to Petitioners

here seeking to circumvent all higher Florida courts. Respondent here exercises no price, rate or charge jurisdiction, or control over the lessee involved in the instant case, "determined exclusively" as did the *Wilmington Parking Authority*.

Finally, no Florida statute or legal pronouncement is in this record that in anywise parallels the Delaware law (24 Delaware Code, Section 1501) upon which any refusal of service herein was relied.

10. Petitioners seek comfort in *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L.Ed. 220, 6 S.Ct. 1064 (1886) which case seems to appear in all briefs where there are persons of mixed races involved in litigation. However, the facts in *Yick Wo* that were admitted into the record of that case were enough to allow a Court to see:

> "They (the ordinances) seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons." 118 U.S. 356, 366. (Parenthesis supplied)

In the instant case, we have no ordinance, no state statute, no exercise of power on the part of the City of Tallahassee to in anywise exercise control over the restaurant sought to be entered by Petitioners.

CONCLUSION

It is respectfully submitted that the decision of the Court below in the case of City of Tallahassee v. Israel Dresner, Austin M. Warner, Robert M. Brown, Petty D. McKinney, Martin Freedman, Arthur L. Hardge, Robert J. Stone, Wayne C. Hartmire, J. W. Collier, Jr. and Ralph L. Roy is correct; there is no conflict of decisions and no basis for further review, as stated in the foregoing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent's Brief in Opposition to Petition For Certiorari has, pursuant to Rule 33 (1) of the Revised Rules of the Supreme Court of the United States, been served by air mail upon Tobias Simon, Esquire, and Howard W. Dixon, Esquire, counsel for Petitioners, at 706 Ainsley Building, Miami 32, Florida, this 4th day of December, A. D. 1962.

James Messer, Jr.
of Counsel for Respondent

APPENDIX A

ARTICLE V. JUDICIAL DEPARTMENT

§ 1. Courts

Section 1. The judicial power of the State of Florida is vested in a supreme court, district courts of appeal, circuit courts, Court of Record of Escambia County, criminal courts of record, county courts, county judge's courts, juvenile courts, courts of justices of the peace, and such other courts, including municipal courts, or commissions, as the legislature may from time to time ordain and establish. [Adopted general election, Nov. 6, 1956.]

§ 3. Practice and Procedure

Section 3. The practice and procedure in all courts shall be governed by rules adopted by the supreme court. [Adopted general election Nov. 6, 1956.]

§ 4. Supreme Court

Section 4. (1) *Organization.* The supreme court shall consist of seven members, one of whom shall be the chief justice. Five justices shall constitute a quorum, but the concurrence of four shall be necessary to a decision.

(2) *Jurisdiction.* Appeals from trial courts may be taken directly to the supreme court, as a matter of right, only from judgments imposing the death penalty, from final judgments or decrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or federal constitution, and from final judgments or decrees in proceedings for the validation of bonds and certificates of indebtedness. The supreme court may directly review

by certiorari interlocutory orders or decrees passing upon chancery matters which upon a final decree would be directly appealable to the supreme court. In all direct appeals and interlocutory reviews by certiorari, the supreme court shall have such jurisdiction as may be necessary to complete determination of the cause on review.

Appeals from district courts of appeal may be taken to the supreme court, as a matter of right, only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution. The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, and may issue writs of certiorari to commissions established by law.

The supreme court may issue writs of mandamus and quo warranto where a state officer, board, commission, or other agency authorized to represent the public generally, or a member of any such board, commission, or other agency, is named as respondent, and writs of prohibition to commissions established by law, to the district courts of appeal, and to the trial courts when questions are involved upon which a direct appeal to the supreme court is allowed as a matter of right.

The supreme court may issue all writs necessary or proper to the complete exercise of its jurisdiction.

The supreme court or any justice thereof may issue writs of habeas corpus returnable before the supreme court or any justice thereof, or before a district court of appeal or any judge thereof, or before any circuit judge.

The supreme court shall provide for the transfer to the court having jurisdiction of any matter subject to review when the jurisdiction of another appellate court has been improvidently invoked.

§ 5. District Courts of Appeal

Section 5. (1) *Appellate Districts.* The state shall be divided into three appellate districts of contiguous counties as the legislature may prescribe, and there shall be organized a district court of appeal in each district.

(3) *Jurisdiction.* Appeals from trial courts in each appellate district, and from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents, may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken direct to the supreme court or to a circuit court.

The supreme court shall provide for expeditious and inexpensive procedure in appeals to the district courts of appeal, and may provide for review by such courts of interlocutory orders or decrees in matters reviewable by the district courts of appeal.

The district courts of appeal shall have such powers of direct review of administrative action as may be provided by law.

A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before that district court of appeal or any judge thereof, or before any circuit judge in that district. A district court of appeal may issue writs of mandamus, certiorari, prohibition, and quo warranto, and also all writs necessary or proper to the complete exercise of its jurisdiction.

§ 6. Circuit Courts

Section 6. (3) *Jurisdiction.* The circuit courts shall have exclusive original jurisdiction in all cases in equity except such equity jurisdiction as may be conferred on juvenile courts, in all cases at law not cognizable by subordinate courts, in all cases involving the legality of any tax, assessment, or toll, in the action of ejectment, in all actions involving the titles or boundaries of real estate, and in all criminal cases not cognizable by subordinate courts. They shall have original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the legislature may provide. They shall have final appellate jurisdiction in all civil and criminal cases arising in the county court or before county judges' courts, of all misdemeanors tried in criminal courts of records, and of all cases arising in municipal courts, small claims courts, and courts of justices of the peace. The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.

The circuit courts and circuit judges shall have such extraterritorial jurisdiction in chancery cases as may be prescribed by law.

APPENDIX B

FLORIDA APPELLATE RULES

Rule 2.1. THE SUPREME COURT

a.(5) Jurisdiction of the Supreme Court

(d) When the jurisdiction of an appellate court has been improvidently invoked, that court may of its own motion or on motion of either party to the cause enter an order transferring it to the court having jurisdiction. Five days notice of such motion or proposed action shall be given to the other parties. Notices of appeal and other papers filed prior to the transfer shall have the same force and effect as if filed in the proper court and as of the time when filed in the court from which the transfer was made.

Rule 2.2 DISTRICT COURTS OF APPEAL

b. Clerk

(6) Filing Fee. In all appeals, and in all cases originating in the court, the clerk shall require the payment of twenty-five dollars at the time the certified copy of the notice of appeal, petition, or other initial pleading is filed; provided that such payment shall not be exacted in advance in criminal appeals in which the defendant has been adjudicated insolvent for the purpose of an appeal, or in appeals where the State of Florida is the real party in interest as the moving party, provided further, that the payment of such fee or any costs shall not be required in habeas corpus proceedings or appeals therefrom, arising out of or in connection with criminal causes or convictions.

Rule 3.18 COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be counted, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of a next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday. If an act be required to be performed on a day certain and such day fall on a Saturday, Sunday or legal holiday, the act shall be performed on the next day which is neither a Saturday, Sunday, nor a legal holiday.

Rule 4.5 EXTRAORDINARY WRITS: MANDAMUS, CERTIORARI, PROHIBITION, QUO WARRANTO, HABEAS CORPUS, AND STAY WRITS

c. Certiorari

(1) Petition to Be Supported by Transcript and Brief. Application for writ of certiorari shall be by petition filed in the Court within 60 days from the rendition of the decision, order, judgment or decree sought to be reviewed. Unless otherwise ordered by the Court, it shall be accompanied by a certified transcript of the record of the proceedings the petitioner seeks to have reviewed or so much thereof as is essential. Unless shown by the respondent or his attorney to be necessary, no other record shall be required. The petition shall contain a concise statement of the cause and the reasons relied on for granting the writ. It shall be accompanied by a supporting brief prepared as provided by Rule 3.7.

APPENDIX C

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA. AT LAW.
NO. 10084

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ROBERT J. STONE, ARTHUR L. HARDGE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH LORD ROY,

Appellants,

vs.

CITY OF TALLAHASSEE,

Appellee.

ORDER AFFIRMING JUDGMENTS

This is an appeal from convictions in the Municipal Court of the City of Tallahassee, Florida of the ten appellants named in the caption who were charged with unlawful assembly. A fine was assessed against each of them with an alternate jail sentence.

The formal charge is in a single count naming the ten appellants and three others* as defendants and alleges an unlawful assembly on June 16, 1961 "in that, they being more than three (3) persons, met together to commit a breach of the peace, acting together and concertedly to occupy and continuously oc-

* Of these three one was acquitted and the other two were granted a nolle prosequi.

cupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace, and while so unlawfully assembled" were commanded by a police officer of the city, after identifying himself as such, to immediately and peaceably disperse, and they refused or neglected to do so.

The appellants contend that the judgments pursuant to convictions violate their rights guaranteed by the Florida and United States Constitutions in that they have been denied the equal protection of the laws and have been deprived of liberty or property without due process of law. They contend that the state statute, Chap. 61-237, Laws of 1961, (F. S. 870.04), (which, by reference adoption in a municipal ordinance,* is made an ordinance of the City of Tallahassee) is unconstitutional and void, either on its face or as it has been applied to the appellants in this case.

The pertinent portions of the statute, adopted as an ordinance, are:

> "If any number of persons ——— are unlawfully, riotously or tumultuously assembled in any ——— city or municipality ——— any ——— police officer of said city or municipality ——— shall go among the persons so assembled ——— and shall, in the name of the state

* Sec. 23-38, Tallahassee Code, provides that it shall be unlawful for any person to commit any act which is or shall be recognized by the laws of the state as a misdemeanor. The penalty is a maximum fine of $500.00 or 60 days imprisonment or both.

command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said [officer] shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present ——— when required by such [officer] to depart from the place, refuses or neglects to do so, he shall be deemed one of ——— the persons unlawfully assembled and may be prosecuted and punished accordingly."

The facts in the case are not in dispute and squarely present the question as to whether or not the conduct of the appellants was an exercise by them of rights they hold under state and federal constitutional provisions, which would preclude their prosecution, conviction and sentence for unlawful assembly in the trial court.

The appellants are clergymen, two being rabbis and the others being ordained ministers of several Protestant denominations. They are residents of New Jersey, New York, Massachusetts or Connecticut. Some of them are of the white race and some are negroes. About June 12 or 13, 1961 they, together with eight other clergymen from the same general area, departed from Washington, D. C. by interstate common carrier bus for a so-called "Freedom Ride" into Virginia, the Carolinas, Georgia, and Florida. The bus ride terminated in Tallahassee June 15, 1961. The "Freedom Riders" left their buses at the Greyhound bus terminal there and went into the terminal lunch room to obtain food which was served them.

This trip was sponsored and at least partially financed by an organization known as C O R E (Congress on Racial Equality) which has been aggressive in promoting racial integration and desegregation. The trip was well publicized, having been given wide coverage in all news media including radio and television. The time and place of arrival in Tallahassee was heralded and well known.

The purposes of the "Freedom Ride," as stated by appellant Collier, who was the spokesman for the group, were two-fold: (1) To ascertain whether or not there were facilities available on an integrated basis to interstate passengers in waiting rooms, in rest rooms, in eating facilities in the terminals through which they would pass; and (2) To bear witness as ministers, rabbis and clergymen to the struggle to obtain those rights "guaranteed us by the Constitution."

Shortly prior to the time the buses bearing the "Freedom Riders" were scheduled to arrive at about noon on June 15, there had gathered in the vicinity of the bus station a number of persons and groups of persons. Law enforcement officers, including city police, had been dispatched to the area to prevent any disturbance. It was suspected that resentment against the "Freedom Riders" might result in some attempts at violence toward them or precipitate other disorders. When the buses arrived, law enforcement personnel moved in and gave protection to the passengers as they left the bus and entered the lunch room in the terminal. Apparently they were served in the lunch room under circumstances and policies satisfactory to them.

In approximately an hour after arrival at the bus terminal the eighteen "Freedom Riders" proceeded to the Tallahassee Municipal Airport ostensibly for the purpose of boarding a 3:25 P.M. Eastern Air Lines plane for passage to Washington, Newark, or New York. They were transported to the airport in private cars presumably furnished by local sympathizers with their objectives.

Upon arrival at the airport they found that the restaurant there had been closed. When the time approached for arrival of the 3:25 plane the ten appellants cancelled the reservation they had previously made for the flight. The other eight boarded the

plane when it arrived and departed for their destinations in the East.

At that time, the airport arrangement provided separate waiting rooms, or areas, for white and negro; also separate rest rooms; and separate areas for serving food, the white area being a glassed-in place and the negro consisting of a counter with several stools. However, as mentioned before, the eating service had been discontinued by the closing of the restaurant facilities. A sandwich vending machine was in the lobby, but the prices on same had been marked up from previous prices.

The appellants stayed together in a more or less compact group in the lobby area most of the time and no attempt was made to enforce separation of the races in the waiting room. Rest rooms were used by them without observing the designation of the segregated facilities.

After cancelling their reservations for the 3:25 P. M. flight they sought and ultimately obtained reservations for a flight the next morning at 8:25 on an E.A.L. plane. They remained in the airport until about 11:00 P. M. that evening for the purpose of observing if the restaurant would open and service be granted to them. The restaurant remained closed.

Law enforcement officers, including city police, were detailed to keep order. The activities and objectives of the appellants had been the subject of news reporting and groups of people were seen to be gathering or attempting to gather in the vicinity of the airport. There were critical and hostile comments made about the appellants. The police turned away some of those gathering when it was apparent such persons had no airport business or interest. Persons were even screened at the entrance and turned away by officers if they had no business to transact at the airport.

The chief of police advised the appellants that the airport ter-

minal would close for the night at approximately 11:45 P. M. and a spokesman for appellants requested protection as they moved from the airport into the city and also on the return to the airport the next morning. Such protection by escort of law enforcement officers was provided.

The appellants thus left the airport at about 11:00 P. M. on the 15th to return the next morning prior to the scheduled departure at 8:25 A. M. of the plane on which they had obtained reservations. They were given escort security protection on both the occasions of leaving and returning to the terminal.

The restaurant was also closed on the morning of June 16. At 8:15 A. M. all ten of the appellants cancelled their reservations for the 8:25 flight and remained in the waiting room after that flight had departed. At 8:20 A. M. they sought, and ultimately obtained, reservations on a National Airlines flight scheduled to depart at 1:47 P. M. that day, but cancelled just prior to noon.

During these periods there continued to be movements and gathering of groups of people in cars and there was a hostility and open resentment against the conduct and attitudes of the appellants. A considerable number of police, sheriff's deputies and highway patrolmen had been detailed to prevent disorder. City, county and state officials, including the Governor, were apprehensive and moved to provide necessary law enforcement personnel to preserve order.

At about 12:15 P. M., Mr. James Messer, Jr., city attorney of Tallahassee and a special police officer of the city, after conferring with the mayor and chief of police of the city, approached the appellants who were together and inquired if there was a leader of the group. Appellant Collier arose and identified himself and assumed to act as spokesman. Mr. Messer identified him-

self and his official positions, exhibiting his police badge. Others in the group gathered around Mr. Messer and Rev. Collier and Mr. Messer read to them a proclamation. He stated that the assembly of the appellants at the Municipal Airport of Tallahassee will tend to create a disturbance or incite a riot or disorderly conduct within the City of Tallahassee at its Municipal Airport over which the city had jurisdiction. He mentioned incidents of the previous night and fears of more unrest. He then commanded them in the name of the state and city to immediately and peaceably disperse, and explained that such meant from the airport property. He then added that failure to so disperse would result in arrest for unlawful assembly. Collier asserted that they were interstate passengers, to which Messer replied that he did not consider them to be bona fide passengers in view of their reservation cancellations.

Several local sympathizers with the appellants dispersed, but appellants failed to do so. After about 1½ minutes, Mr. Messer turned to the Chief of Police and remarked "Chief, you can carry out your orders." The appellants were arrested and taken into custody.

The appellants take the view that the segregation practices with regard to waiting rooms, rest room facilities, and restaurant or eating facilities at the airport were violative of constitutional guarantees of equal protection of the law. They would also inject into the case the installation of sandwich and cigarette machines, at or just prior to their arrival, which inflated the prices of merchandize vended to double what it had been. The closing of the restaurant on the day of their arrival and its opening shortly after their departure is viewed as an important factor.

These facts are, in the view of this Court, not at all significant in the legal problems involved in the charge against the appellants and the disposition of such charge by the trial court.

The municipality of Tallahassee operates in a proprietary capacity and in a governmental capacity. Among its proprietary functions is the ownership and operation of a municipal airport and supervision over the concessions there. Assuming, but not deciding, that its policies of segregation of the races in its facilities are unlawful and did constitute a violation of some duty to the appellants if enforced against them, and further assuming, without deciding, that the closing of the restaurant under the circumstances violated some duty to them, do such circumstances justify a concerted protest demonstration by appellants of their views and convictions over a protracted period of time during which tensions and tempers rise in the community which threaten to erupt into disorder and thus render the city, in its governmental capacity, powerless to terminate the demonstration in the exercise of its police power?

Stated another way, may not a lawful assembly for the purpose of protesting and demonstrating opposition to a course of policy practiced by the municipality become an unlawful assembly when pursued to unreasonable lengths imposing unreasonable burdens on others, after the lawful objectives of the demonstration had been fairly accomplished?

It is fundamental that our constitutions accord to the citizens of the United States the right of freedom of speech and of assembly and to peaceably petition for a redress of grievances. Such freedoms are jealously guarded and when exercised in good faith and in good order may not be lawfully interfered with by governmental action. However, it is not a license to take into one's own hands the enforcement of law or by excessive harassment, effect coercion and acceptance of one's convictions and interpretations of legal rights by governmental entities whose policies are in conflict. Such procedures wholly ignore the very machinery provided by the constitutions and laws of the nation and state for the declaring, securing and enforcement of

constitutional and other legal rights. It is the courts, both state and federal, to whom resort is readily available for citizens to seek recognition and enforcement of legal rights and immunities. That such courts may not move as swiftly as the individual would wish does not authorize pursuit of personal means which unnecessarily create or threaten public disturbance or disorder, or which substantially interfere with normal, orderly functions of a public facility.

Such a procedure is a form of anarchy which, if it becomes an accepted practice, can have only the effect of seriously weakening orderly government.

The appellants, prior to the reading of the riot act to them, had achieved their announced objectives. They had observed both at the bus station and the airport the integration or lack of it of the waiting room, rest room and restaurant facilities. They had very effectively borne witness as clergymen and otherwise of their sympathy with the struggle to obtain desegregation of the various facilities of interstate travel.

To accomodate and facilitate those legitimate objectives the law enforcement agencies of city, county and state had given protection against potential violence or other disorder from groups or individuals who resented the activities of the appellants. This protection was afforded at the bus station, at the airport on the afternoon of June 15, on the evening of June 15 when the appellants left the airport to come into town and on the following morning when they returned to the airport purportedly to take an early plane. However, instead of using the reservations they had obtained they made a cancellation. This was thrice they had made last minute cancellations of reservations for the sole reason that they wished to eat in the restaurant, which was closed. In the meantime their conduct and persistence

was arousing increased resentment and anger in the community with threats of violence and disorder toward the appellants.

Obviously, the conduct of appellants had revealed a pattern. They would make reservations for travel, wait in the lobby until just before the plane they were scheduled to take arrived and then cancel, make reservations on a later flight and then again cancel at the last minute, at all times remaining in the airport but never taking a plane. The effect is obvious. The seats and other facilities are occupied by them and their use denied to those who actually wished to travel. The use of rest rooms and wash rooms by them partakes more of lodging than a comfort feature for those whose sole purpose is some airport business. The reservation of space and last minute cancellation prevented the use of that space of the flights involved, resulting in loss and inconvenience to the air line involved and probable denial to other would-be travelers of the use of that space. The sole purpose of such a course of harassment was to goad the municipality and its restaurant lessee to open the restaurant and gratify the appellants' wishes that they be served in the style and manner they deemed to be their right.

Controversies between citizens and governmental units are not unique. In nearly every instance there is a conflict in what the citizen contends he has a right to claim and the governmental entity which would deny the validity of such claim. The citizen may freely express his views and seek to cultivate converts to them with a view of bringing moral or political pressures on the officers of the public body to accord his demands. However, such means must be exercised in a manner that is reasonable and not harmful to the rights of others or the peace and good order of the community. Especially is this true when the controversy is one of public interest in which there are strong and emotional feelings on the part of a substantial number of persons in the community.

The courts, both state and federal, are open to resolve controversies on constitutional issues in duly instituted and processed civil actions. Indeed, the very issue in the demonstrations of the appellants was subsequently presented to and adjudicated by the United States District Court for the Northern District of Florida. Brooks, et al v. Tallahassee, 202 Fed. Supp. 56. When citizens press their demonstrations in behalf of a cause (however worthy they deem their objectives to be) beyond the bounds of fully and effectively delivering their message and reach the stage that they materially and harmfully interfere with the orderly business and lawful activities of others, who are acting in public or private capacities, then the conduct is disorderly and assembly for carrying it out is unlawful. Such was the case here.

The judgments appealed from are hereby affirmed.

Affirmed. Dated this 16 day of August, 1962.

BEN. C. WILLIS
Circuit Judge

APPENDIX D

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1961

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ROBERT J. STONE, ARTHUR L. HARDGE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH LORD ROY,

Appellants,

vs.

CASE NO. 31,121

CITY OF TALLAHASSEE,

Appellee.

Opinion filed November 1, 1961

An Appeal from the Municipal Court, in and for the City of Tallahassee, John A. Rudd, Judge

Tobias Simon, Alfred I. Hopkins and Howard W. Dixon, for Appellants

James Messer, Jr., City Attorney, and Edward J. Hill, City Solicitor, for Appellee

THORNAL, J.

We have for consideration a motion to dismiss a direct appeal from the Municipal Court of the City of Tallahassee.

We must decide whether this Court has jurisdiction to consider the appeal.

The City charged that the appellants did "unlawfully assemble . . . contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida." A trial in the municipal court culminated in a finding of guilt and a sentence to pay a fine with an alternative term in the city jail. At the outset of the trial the appellants moved to dismiss the complaint with the contention that Section 870.04, Florida Statutes, as amended by Chapter 61-237, Laws of Florida, 1961, was being invalidly applied against them. The City Judge announced that "the statute is not unconstitutional on its face." Coming here directly from the municipal court appellants contend that the trial judge passed directly on the validity of a state statute and that we, therefore, have jurisdiction pursuant to Section 4, Article V, Florida Constitution. The appellee's motion to dismiss questions the jurisdiction of this Court to determine the matter on a direct appeal. This motion has been argued and is now here for disposition.

The appellants were charged with the violation of the municipal ordinances of the City of Tallahassee. Nowhere in the complaint were they charged with a violation of a state statute. A reference to Section 870.04, supra, as amended, will reveal that the statute condemns a riotous assembly and provides a penalty under Section 870.02, Florida Statutes. The offense described in the statute is a misdemeanor triable in the state courts. The statute does not even impliedly define a municipal offense. This distinction is important in determining our jurisdiction. It is perfectly clear that the municipal judge was not confronted by the necessity of passing directly on the validity of a state statute. The most that could be said would be that he was called upon to pass upon the validity of a municipal ordinance. In ac-

tuality, the record indicates that he was merely requested to decide that "the statute" was invalid "as applied to the appellants." The real contention asserted before the trial judge questioned the application of the statute, rather than its fundamental validity.

This Court derives its appellate jurisdiction from Article V, Florida Constitution. By Section 4(2), Article V, supra, appeals from trial courts may be taken directly to this Court from certain specified types of judgments. Among these are "final judgments or decrees directly passing upon the validity of a state statute . . . or construing a controlling provision of the Florida or federal constitution . . ." We must look to this constitutional provision as the source of our jurisdiction to entertain the instant appeal.

It is clear that the trial judge, at most, was called upon to pass upon the validity of a municipal ordinance. This is so because the appellants were charged with a violation of the municipal ordinances, rather than with a violation of a state statute. We have long ago held under Section 4(2), Article V, supra, that this Court did not have the power to entertain a direct appeal from a judgment of a trial court which merely passes upon the validity of a municipal ordinance. For purposes of determining the jurisdiction of this Court, a municipal ordinance cannot be classified as a "state statute." Armstrong et al v. City of Tampa, Fla. 1958, 106 So. 2d 407. While conceivably a municipal court could be considered as a "trial court" from which a direct appeal could come here if in some peculiar situation the municipal court passed directly upon the validity of a state statute, such is not and could not have been the instant situation. Boyd v. County of Dade, Fla. 1960, 123 So. 2d 323. Moreover, even though the appellants attempted to question the validity of the application of the cited statute, they did not in any fashion assault the fundamental validity of the statute itself. Jurisdiction comes to us by direct appeal when the validity of the statute is assaulted and

passed upon. When the problem involves the validity of the application of an otherwise valid statute, a direct appeal here is not available unless there be a final judgment or decree which construes a controlling provision of the State or federal constitutions. Stein v. Darby, et al., opinion filed October 11, 1961. In the instant case there was certainly no such construction. The final judgment of the municipal judge merely contained a finding of guilt and the assessment of the fine. Nowhere in the record is there a construction of the constitution. Armstrong v. City of Tampa, supra.

Although ordinarily motions of the type involved here would be disposed of without opinion, we deemed it appropriate to elaborate on our reasons for the future guidance of the Bar.

Finding as we do that this Court is without jurisdiction to hear the instant appeals, the motion to dismiss is well-taken. However, we will treat the motion as a motion to transfer an appeal improvidently lodged in this Court. Rule 2.1a (5)(d), Florida Appellate Rules. Under Section 6, Article V, Florida Constitution, the circuit courts have jurisdiction to hear appeals from municipal courts when they involve questions such as those presented here. It is, therefore, ordered that within five days from the filing of this opinion all papers, records, briefs and other documents, including the notice of appeal, be and the same are hereby transferred to the Circuit Court, Second Judicial Circuit for appropriate disposition. Our opinion is not to be construed as in any fashion passing upon the merits of the appeal or the sufficiency of the record, including the notice of appeal. These are matters to be disposed of by the circuit court in the exercise of its appellate jurisdiction.

It is so ordered.

ROBERTS, C. J., HOBSON, DREW and O'CONNELL, JJ., concur

APPENDIX E

STATE OF FLORIDA)
)
COUNTY OF LEON)

I, RAYMOND E. RHODES, Clerk of the District Court of Appeal, First District, State of Florida, do hereby certify that:

On October 16, 1962, I received a petition for certiorari, brief of petitioner, and certain portions of the record in a case styled ISRAEL DRESNER, et al, vs. CITY OF TALLAHASSEE, which was unaccompanied by the necessary $25.00 filing fee. Subsequent to receipt of the above, on the same day, I received a telephone call from a person who identified himself as Tobias Simon, Esquire, of Miami, Florida, who represented the petitioner. Mr. Simon's inquiry was for the purpose of determining whether or not the petition for certiorari had been received. I advised Mr. Simon that the petition had been received but had not been filed because the necessary filing fee did not accompany the petition. Mr. Simon requested that I hold the petition and that he would advise me later on that morning whether or not he wished the petition filed.

During the afternoon of October 16, 1962, I received another call from Miami from a person identifying himself as an associate in the law office of Tobias Simon, Miami. This person stated that Mr. Simon was in Court and had requested that he call me and have me to return to Mr. Simon the petition for certiorari received that morning.

Had the necessary $25.00 filing fee accompanied this case the earliest date of filing would have been the morning of October 16, 1962. This case was never filed in the office of this Court.

WITNESS my hand and seal this 7th day of November, A. D. 1962.

RAYMOND E. RHODES
Clerk First District Court of Appeal
Tallahassee, Florida

(Seal)

APPENDIX F

870.02, Florida Statutes, 1961, provides as follows:

870.02 UNLAWFUL ASSEMBLIES.—If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

870.04, Florida Statutes, 1961, provides as follows:

870.04 MAGISTRATE TO DISPERSE RIOTOUS ASSEMBLY.—If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality, the sheriff or his deputies, or any constable or justice of the peace of the county, or the mayor, or any commissioner, councilman, alderman or police officer of the said city or municipality, or any officer or member of the Florida highway patrol, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Tallahassee City Code, § 23-38, provides as follows:

Sec. 23-38. STATE MISDEMEANORS.

It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be recognized by the laws of the State as a misdemeanor, and the commission of such acts is hereby forbidden.

Whosoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is therefor provided by the laws of the state, but in no case shall such penalty exceed a fine of five hundred dollars, or an imprisonment for more than sixty days, or both such fine and imprisonment in the descretion of the municipal judge.

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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 35

ISRAEL DRESNER, AUSTIN M. WARNER,
ROBERT M. BROWN, PETTY D. McKINNEY,
MARTIN FREEDMAN, ARTHUR L. HARDGE,
ROBERT J. STONE, WAYNE C. HARTMIRE,
J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

vs.

CITY OF TALLAHASSEE,

Respondent.

PETITIONERS' REPLY BRIEF

TOBIAS SIMON and HOWARD W. DIXON,
Attorneys for Petitioners
223 Southeast 1st Street
Miami 32, Florida

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IN THE

Supreme Court of the United States

October Term, 1962

No. ————

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

vs.

CITY OF TALLAHASSEE,

Respondent.

PETITIONERS' REPLY BRIEF

ARGUMENT

INTRODUCTION

Respondent's contention that the Supreme Court of the United States lacks jurisdiction of this cause under 28 U.S.C. §1257 is without merit.

Petitioners were convicted in the Municipal Court of the City of Tallahassee and judgment was affirmed on appeal by the Circuit Court of the Second Judicial

Circuit of Florida. Petitioners seek a Writ of Certiorari to that Circuit Court as the highest court of the State in which a decision could be had.

Respondent concedes that the said Circuit Court has "final appellate jurisdiction" of the instant case under Article V, §6(3) of the Constitution of Florida, but asserts that further review of the instant case may be had at the discretion of the Supreme Court of Florida and the District Courts of Appeal of Florida through their power to issue common law Writs of Certiorari. (Resp. Br. pp. 3-8).

Petitioners will demonstrate the untenability of Respondent's position with two clear and definitive principles of law: first, the Florida common law Writ of Certiorari is limited in its application and does not provide **full review** of the cause involved; second, the power of **full review** by a higher State court is required to prevent this Court from having jurisdiction.

I. THE FLORIDA COMMON LAW WRIT OF CERTIORARI DOES NOT PROVIDE FULL REVIEW BY A HIGHER COURT BUT IS LIMITED TO DETERMINING WHETHER THE LOWER COURT HAS EXCEEDED ITS JURISDICTION OR PROCEEDED TYRANNICALLY WITHOUT REGARD TO ESSENTIAL REQUIREMENTS OF LAW.

The Circuit Court has "final appellate jurisdiction . . . of all cases arising in Municipal Courts . . . " (Constitution of Florida, Article V §6[3]).

There are "higher" courts in Florida — the District Courts of Appeal and the Supreme Court of Florida—each of which has appellate jurisdiction of trial courts **other** than Municipal Courts and each of which also may issue "all Writs necessary or proper to the complete exercise of its jurisdiction." (Constitution of Florida, Article V, §§5 and 4 respectively).

In the instance of the District Courts of Appeal of Florida, at least, the power to issue common law Writs of Certiorari to inferior tribunals, when they proceed in a cause without jurisdiction or when their procedure is not according to the essential requirements of law, is granted or preserved.

It is the existence of this power in the District Courts of Appeal of Florida that has led Respondent to suggest that the Supreme Court of the United States lacks jurisdiction to issue its Writ of Certiorari to the Circuit Court as the "highest court of the State in which a decision could be had." Respondent even states in its Brief that Petitioners must seek relief from the District Court of Appeal and then from the Supreme Court of Florida before jurisdiction lies in the Supreme Court of the United States to issue a Writ of Certiorari. (Resp. Br. p. 8) Such a conclusion, of course, emasculates the orderly system of intermediate appellate jurisdiction provided by the Florida Constitution, and establishes the Supreme Court of Florida as the sole "highest court" under 28 U.S.C.A. 1257 in every case—thereby depriving the federal statute of meaning as well as the state constitution.

The fallacy inherent in Respondent's suggestion becomes apparent when it is noted that the common law

Writ of Certiorari does not constitute a method of reviewing the proceedings below.

In State v. Katz, Fla. App., 108 So.2d 60 (1959), the District Court of Appeal of Florida, Third District, had before it a Petition for Certiorari to review the action of a Circuit Court reversing a misdemeanor conviction in a Court of Crimes, and made the following pertinent determination:

> "The Constitution confers upon the Circuit Courts 'final appellate jurisdiction in all civil and criminal cases arising in the County Court, or before County Judges' Courts, of all misdemeanors tried in Criminal Courts of Record, and of all cases arising in Municipal Courts, Small Claims Courts, and Courts of Justices of the Peace.' Constitution of Florida, Article V, Section 6 (3), 26 F.S.A.
>
> **"Due regard for the plain language of the Constitution prevents this appellate court from entertaining a second appeal. The common law Writ of Certiorari was not meant for and may not be diverted to such purpose.** See Townsend v. State, Fla. App. 1957, 97 So.2d 712, 713; 5 Fla. Jur., Certiorari, Section 25. On such certiorari we must restrict our consideration within those limits which have been well defined by the Supreme Court.
>
> "In Benton v. State, 74 Fla. 30, 76 So. 341, 342, it was held that as to those cases where the Constitution afforded final appellate jurisdiction in

the Circuit Courts, certiorari to the Supreme Court could not be used for a second appeal, nor to produce the merits for review as on appeal; that in such circumstances the Writ may not be used to review and affirm or reverse the order of the Circuit Court made in the exercise of its granted (final) appellate jurisdiction, but calls for an order which 'must either quash the proceeding of the Judge of the Circuit Court, or quash the certiorari which brings it here.

"In American Ry. Express Co. v. Weatherford, 84 Fla. 264, 93 So. 740, 741, 742, the Supreme Court, in an opinion by Mr. Justice Whitfield, concisely defined the nature and scope of the common law Writ of Certiorari, as follows:

"'Certiorari is a common-law writ which issues in the sound judicial discretion of the court to an inferior court, not to take the place of a writ of error or an appeal, but to cause the entire record of the inferior court to be brought up by certified copy for inspection, in order that the superior court **may determine from the face of the record whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of the law**, in cases where no direct appellate proceedings ar provided by law. Seaboard Air Line R. Co. v. Ray, 52 Fla. 634, 42 So. 714.'

"In Brinson v. Tharin, 99 Fla. 696, 127 So. 313, 316, dealing with the office and scope of a Writ of Certiorari directed to an order of the

Circuit Court acting as an appellate court, the Supreme Court said:

> "'The writ, confined to its legitimate scope, may issue within the court's discretion at any time to correct the procedure of courts wherein they have not observed those requirements of the law which are deemed to be essential to the administration of justice. It is important, however, that the court should not broaden or extend the scope of the writ.
>
> "'**A judgment void for lack of jurisdiction or a proceeding characterized by a kind of tyranny in the failure to observe essential requirements should be subject to correction at the discretion of the court vested with the power to issue the writ.**
>
> "'* * * * *
>
> "'The common-law Writ of Certiorari cannot be made to serve the purpose of an appellate proceeding in the nature of a writ of error. The writ involves a limited review of the proceedings of an inferior jurisdiction. **It is original in the sense that the subject-matter of the suit or proceedings which it brings before the court are not here reinvestigated, tried, and determined upon the merits generally as upon appeal at law or writ of error.** Basnet v. City of Jacksonville, 18 Fla. 523'." (pp. 61-2, Emphasis supplied.)

In **State v. Smith**, Fla. App., 118 So.2d 792 (1960), the District Court of Appeal of Florida, First District, had before it a Petition for Certiorari to review a judgment of a Circuit Court reversing a judgment of conviction of a County Judge's Court. The respondent was riding in an automobile owned by one of the occupants when wildlife officers stopped them, searched the car without a warrant and then placed all persons under arrest for taking a doe deer contrary to law. Timely motion to suppress, made by all defendants, was overruled and convictions followed. On appeal, the Circuit Court, in full review of the proceedings, found no probable cause existed to search the vehicle without a warrant and prior to arrest; therefor, the convictions of both the owner and the respondent-passenger were reversed. On Petition for Certiorari from the District Court of Appeal to the Circuit Court, the petitioner contended that the Circuit Court's determination as to the respondent, as an **occupant** of the vehicle, departed from the essential requirements and the settled principles of law in that only persons whose rights had been invaded could invoke the constitutional guarantee against unlawful search and seizure. The District Court of Appeal found that the Circuit Court had **erred**:

> "Generally an accused cannot protest a wrongful search and seizure of premises and property which he does not own or lease or lawful occupy or possess or in which he has no interest. The applicability of this rule to occupants of motor vehicles who are mere invitees was precisely passed upon by this court in the Cameron case in which the general rule above

stated was followed. [Cameron v. State, Fla. 1959, 112 So.2d 864]"

But the Court stated:

"Regardless of the correctness of the State's position on the proposition of law presented by its petition for certiorari, we cannot agree that the writ should issue and the Circuit Court's judgment be quashed.

"As to those cases where the Constitution affords final appellate jurisdiction in the Circuit Courts, certiorari may not be used in this court for the purpose of securing a second appeal, nor to produce the merits for review on appeal. The writ may not be used to review and affirm or reverse the judgment of a Circuit Court made in the exercise of its final appellate jurisdiction, but requires that the judgment be either quashed, or the writ of certiorari dismissed.

"Certiorari is a common-law writ which issues in the sound judicial discretion of the court to an inferior court, not to take the place of an appeal, but to cause the entire record of the inferior court to be brought up in order that it may be determined from the face thereof whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of law. Confined to its legitimate scope, the writ may issue within the court's discretion to correct the procedure of courts wherein they have not observed those requirements of

> the law which are deemed to be essential to the administration of justice. It is important, however, that the court should not broaden or extend the scope of the writ. A judgment void for lack of jurisdiction, or a proceeding characterized by a complete failure to observe essential requirements of law is subject to correction at the discretion of the court vested with the power to issue the writ. Failure to observe the essential requirements of law means failure to accord due process of law within the contemplation of the Constitution, or the commission of an error so fundamental in character as to fatally infect the judgment and render it void. Certiorari is confined to a limited review of the proceedings of an inferior jurisdiction. **It is an original action in the sense that the subject matter of the suit or proceedings which it brings before the court are not there reinvestigated, tried and determined upon the merits generally as upon an appeal.**" (pp. 794-5, Emphasis supplied).

In **Cast-Crete Corp. v. Prater**, Fla. App., 134 So.2d 813, 815 (1961), the District Court of Appeal held that the Writ of Certiorari may not be employed "to re-weigh or to re-evaluate evidence."

One instance in which the common law Writ of Certiorari was granted by a District Court of Appeal to a Circuit Court quashing its judgment affirming convictions entered in a Municipal Court is found in **Aguilera v. City of Miami**, Fla. App., 115 So.2d 421 (1959), wherein

the Court corrected "a judgment void for lack of jurisdiction" and held:

> "It conclusively appears that Aguilera could not have been guilty of the charges of disturbing the peace of the City of Miami by the possession of property in her home in the City of Coral Gables. **The Municipal Court of the City of Miami lacked the jurisdiction to try her** for an offense allegedly committed outside its city boundaries. The Circuit Judge departed from the essential requirements of law when he confirmed the conviction upon charges over which the Municipal Court had no jurisdiction." (p. 422, Emphasis supplied).

II. THE FACT THAT STATE LAW PROVIDES FOR RELIEF FROM A LOWER STATE COURT JUDGMENT BY SUBSEQUENT AND DISTINCT PROCEEDINGS **NOT IN THE NATURE OF A FULL REVIEW** OF THE LOWER COURT'S JUDGMENT DOES NOT RENDER THE LOWER COURT NOT THE "HIGHEST COURT OF THE STATE IN WHICH A DECISION COULD BE HAD".

The "supervisory" power of the District Courts of Appeal of Florida to issue common law Writs of Certiorari to Circuit Courts acting in their "final appellate jurisdiction" does not establish the District Courts of Appeal as "the highest" courts under 28 U.S.C.A. §1257. To conform to the statutory meaning of that term, a court must provide opportunity for a **full review** of the merits of the case. The power to issue the so-called com-

mon law Writs of Certiorari or review is well nigh universal by "higher" courts to intermediate appellate courts of final jurisdiction. Moreover, the legal arsenal available to litigants in every State provides some means of collateral attack on "final" judgments of intermediate appellate courts, including habeas corpus, coram nobis and other related, independent, and sometimes original proceedings. Nevertheless, the existence of these remedies does not deprive the intermediate court of final appellate jurisdiction from being the "highest court" and the Supreme Court of the United States in numerous instances has reviewed final appellate judgments of intermediate State appellate courts. **Woods v. Nierstheimer**, 328 U.S. 211, 66 S.Ct. 996, 90 L.Ed. 1177 (1946); **Tucker v. Texas**, 326 U.S. 517, 66 S.Ct. 274, 90 L.Ed. 274 (1946); **Thompson v. Louisville**, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960); **Jamison v. Texas**, 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869 (1943); **Largent v. Texas**, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873 (1943); and **Talley v. California**, 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559 (1960).

In **Largent v. Texas**, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873 (1943), this Court held it had jurisdiction even though the appellant had a further method of review under Texas law by a **higher** State court, i.e., by habeas corpus, because such method of review did not permit **full** review of the cause. Appellant was originally convicted in a Texas Municipal Court of violating an ordinance by offering books for sale without a permit granted at the municipal officer's discretion; appellant appealed to the County Court where a trial de novo was had and motions to quash the complaint because the ordinance violated the Fourteenth Amendment were overruled. The Supreme Court of the United States had previously

"requested counsel to discuss whether this judgment could be **fully reviewed** on this record by a higher state court by habeas corpus or other proceeding." (at 318 U.S. 421, 63 S.Ct. 668; emphasis supplied). In its opinion assuming jurisdiction and reversing the judgment below, the Supreme Court of the United States noted that Vernon's Tex. St. 1936 Art. 53 (Code Criminal Procedure) explicitly gave the County Court final appellate jurisdiction since the fine did not exceed one hundred dollars, and relied on **Ex parte Largent**, 162 S.W.2d 419 (Tex. Cr. App. 1942), for the Texas rule that habeas corpus did not constitute a "method for reviewing the conviction of appellant" so as to deprive this Court of jurisdiction:

> "The appellant, under Texas practice, apparently could test by habeas corpus the constitutionality on its face of the ordinance under which she was convicted but may not use that writ to test the constitutionality of the ordinance as applied to the act of distributing religious literature. Since there is by Texas law or practice, no method which has been calld to our attention for reviewing the conviction of appellant, on the record made in the county court, we are of the opinion the appeal is properly here under Section 237(a) of the Judicial Code. The proceeding in the county court was a distinct suit. It disposed of the charge. **The possibility that the appellant might obtain release by a subsequent and distinct proceeding, and one not in the nature of a review of the pending charge, in the same or a different court of the State does not affect the finality of the existing judgment or the fact that this judgment was obtained in the highest**

state court available to the appellant." (318 U.S. 421, 422, 63 S.Ct. 669; emphasis supplied)[1]

Similarly, in **Tucker v. Texas**, 326 U.S. 517, 66 S.Ct. 274, 90 L.Ed. 274 (1946), this Court held as follows:

> "The appellant was charged in the Justice Court of Medina County, Texas, with violating Article 479, Chap. 3 of the Texas Penal Code, which makes it an offense for any 'peddler or hawker of goods or merchandise' wilfully to refuse to leave premises after having been notified to do so by the owner or possessor thereof. The appellant urged in his defense that he was not a peddler or hawker of merchandise, but a minister of the gospel engaged in the distribution of religious literature to willing recipients. He contended that to construe the Texas statute as applicable to his activities would, to that extent, bring it into conflict with the Constitutional guarantees of freedom of press and religion. His contention was rejected and he was convicted. On appeal to the Medina County Court, his Constitutional contention was overruled. **Since he could not appeal to a higher state court this appeal under Sec. 237(a) of the Judicial Code, 28**

[1]In Ex parte Largent, supra, the Texas court interpreted Article 53 as not permitting habeas corpus by the Court of Criminal Appeals to review *facts* since such review would actually be an appeal. Thus, the court held, habeas corpus (defined in Vernon's Texas Code of Criminal Procedure Art. 113 and grantable by Courts of Criminal appeals, district courts, county courts, or any judges thereof under Art. 117) could only be used when attacking an ordinance *on its face* since an attack upon the ordinance *as applied* would necessitate proof of its wrongful application in that the *facts* did not support the judgment of conviction.

U.S.C. 344(a), 28 U.S.C.A. §344(a) is properly before us, Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873." (p. 274, emphasis added).

See also **Jamison v. Texas,** 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869 (1943).

Cases arising in California are particularly illuminating for the reason that the California judicial system is almost identical to that of Florida. The jurisdiction of the California Superior Courts is set forth in Article VI, Section 5, of the California Constitution as follows:

> "The Superior Courts shall have appellate jurisdiction in such cases arising in Municipal and in Justices' and other inferior courts in their respective counties or cities and counties as may be prescribed by law. The Legislature may, in addition to any other appellate jurisdiction of the Superior Courts, also provide for the establishment of appellate departments of the Superior Court in any county or city and county wherein any Municipal Court is established, and for the constitution, regulation, jurisdiction, government and procedure of such appellate departments."

The jurisdiction of the Supreme Court of California in part, is set forth in Article VI, Section 4, of the California Constitution as follows:

> " . . The said [Supreme] court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction."

The jurisdiction of District Courts of Appeal of California in part is set forth in Article VI, Section 4b, of the California Constitution as follows:

> " . . . The said [District] courts [of appeal] shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction."

The following cases sustain the power of courts "higher" than the Superior Courts in California to issue writs of certiorari to that court:

> **Redlands High School District v. The Superior Court of San Bernardino County**, 20 Cal.2d 348, 125 Pac.2d 490;
>
> **Auto Equity Sales, Inc. v. The Superior Court of Santa Clara County**, 57 Cal.2d 450, 20 Cal. Rep. 321, 369 Pac.2d 937;
>
> See also, **Fortenbury v. The Superior Court of Los Angeles County**, 16 Cal.2d 405, 106 Pac.2d 411.

In **Talley v. California**, 362 U.S. 61, 80 S.Ct. 536, 4 L.Ed.2d 559, the defendant was convicted in the Municipal Court of Los Angeles for violating a municipal ordinance making it an offense to distribute handbills not bearing the names and addresses of the distributors. The Superior Court affirmed on appeal. Thereafter, Talley made application to the United States Supreme Court for a

Writ of Certiorari to the Superior Court of the County of Los Angeles. This Court stated:

> "Since this was the highest State court available to petitioner, we granted certiorari to consider this constitutional contention." 4 L.Ed.2d at 561.

In other cases, the United States Supreme Court has ruled that the Superior Courts of California are the highest courts of the State in which a decision could be had under the provisions of 28 U.S.C. 1257 when such court acted in its appellate jurisdiction. **Smith v. California,** 361 U.S. 147, 149, 80 S.Ct. 215, 4 L.Ed.2d 205, 208; **Edwards v. California,** 314 U.S. 160, 171, 62 S.Ct. 164, 86 L.Ed. 119, 124; **Robinson v. California,** 370 U.S. 660, 82 S.Ct. 1417 (1962), 8 L.Ed.2d 758.

The cases of **Stratton v. Stratton,** 239 U.S. 55, 36 S.Ct. 26, 60 L.Ed. 142, and **Matthews v. Huwe,** 269 U.S. 262, 46 S.Ct. 108, 70 L.Ed. 266, cited in the Respondent's Brief (p. 4) are distinguishable from the cases herein cited as well as the case at Bar for the reason that the Ohio Supreme Court has power, under the Ohio Constitution and laws, to review in every case judgments or decrees of the Courts of Appeals of Ohio where, in the exercise of its judgment, the Ohio Supreme Court deems them to be of such public or great general interest as to require review; therefore, the Supreme Court of Ohio was the highest court in which a **full decision** on the merits of any particular case could be had. In **Stratton, supra,** the United States Supreme Court held that for it to assume jurisdiction without a previous application for review having been made to the Ohio Supreme Court

would be to indulge in conjecture as to what would or would not have been the judgment of the Ohio Supreme Court if it had been called upon to exert the discretionary full review vested in it by State law.

An interesting case in this connection is **The Sovereign Camp of the Woodmen of the World v. Neff**, 286 U.S. 549, 52 S.Ct. 501, 76 L.Ed. 1285, in which this Court denied a petition for writ of certiorari to the Kansas City Court of Appeals of Missouri in a Memorandum Decision. (The opinion of the Kansas City Court of Appeals is reported at 48 S.W.2d 564.) The following comments on the case are taken from Robertson and Kirkam, "Jurisdiction of the Supreme Court of the United States", pp. 94, 95 (emphasis supplied):

> "There, a suit involving $2,400 but in which a question arising under the federal Constitution was raised, was brought in a Missouri trial court. The briefs of the parties in the Supreme Court showed that the Missouri courts of appeals had jurisdiction over appeals involving a sum less than $7,500, their decisions in such cases apparently not being subject to appeal; that if, however, a question arising under the federal Constitution was involved, the state supreme court had jurisdiction of the appeal, but the case was taken before it either by direct appeal from the trial court, or by a transfer of the cause from the court of appeals. In the instant case the direct appeal was taken, but the state supreme court transferred the case to the court of appeals, undoubtedly on the ground urged before it by respondent, that, although the federal

question was raised in the pleadings, it was not preserved in the motion for new trial, as required by the settled state practice. After a final judgment by the court of appeals, petitioner applied to the United States Supreme for a writ of certiorari. It was objected by respondent that petitioner had failed to exhaust its remedies below, since the Missouri Supreme Court has the power to review decisions of the lower state courts by certiorari, and petitioner had not applied for such a writ. But the state authorities cited referred only to the power of the state supreme court to issue a common-law writ of certiorari to a court which exceeded its jurisdiction. It is submitted that this argument was untenable. **No decision is known which would indicate that a party litigant must make a collateral attack in a higher court on an otherwise final judgment of the highest court of the state in which a decision could be had before review may be sought in the federal Supreme Court. Cf. Largent v. Texas.** . . . Rather, it would appear that the Supreme Court may have denied certiorari in the Neff case, which was unusually strong on the merits, because, although the judgment of the court of appeals sought to be reviewed was a final judgment of the highest court of the state in which a decision could be had, petitioner had failed to secure a review in the state court of last resort through failure properly to preserve the federal question under the settled state practice. (citations)".

CONCLUSION

No contention is raised by the Petitioners in the case at Bar that the Circuit Court of the Second Judicial Circuit, Florida, had no jurisdiction to act, or that it departed from the essential requirements of law. Petitioners contend simply that the Circuit Court erred in not reversing the Municipal Court of the City of Tallahassee by reason of the Constitutional questions raised in this case and discussed in Petitioner's main brief. The Florida District Court of Appeal could not review the lower court's ruling on these questions and had no discretion to do so. The sole power granted or preserved to the Florida District Courts of Appeal by Certiorari is to determine whether or not the court below exceeded its jurisdiction and whether or not that court departed from the essential requirements of law. The Florida District Court of Appeal cannot use its common law Writ of Certiorari to correct the errors below by a **full review** of the proceedings below. Any effort by Petitioners to secure a Writ of Certiorari from the Florida District Court of Appeal to the Florida Circuit Court would have to be erroneous and unsuccessful. A Writ of Certiorari to be issued by the Supreme Court of the United States must be directed to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, the highest state court in which a decision could be had in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioners' Reply Brief has, pursuant to Rule 33 (1) of the Revised Rules of the Supreme Court of the United States, been served by mail upon EDWARD J. HILL, Attorney for Respondent, 216 East Jefferson Street, Tallahassee, Florida, by air mail this _____ day of February, 1963.

_____

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IN THE

Supreme Court of the United States

October Term, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

v.

CITY OF TALLAHASSEE,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

BRIEF FOR THE PETITIONERS

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IN THE

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October Term, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

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v.

CITY OF TALLAHASSEE,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

BRIEF FOR THE PETITIONERS

OPINION BELOW

The opinion of the court below, the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida (hereinafter referred to as the Circuit Court), affirming Petitioners' convictions by the trial court, is not reported, but is set forth in full in the Record. (R. 156)

JURISDICTION

The judgment of the Circuit Court was entered on August 16, 1962. (R. 156) The Petition for Writ of Certiorari was filed herein on November 13, 1962, and the Petition was granted by this Court on April 15, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

Article V § 6(3) of the Constitution of the State of Florida provides that the Circuit Courts shall have final appellate jurisdiction of all cases arising in municipal courts. Petitioners were convicted by the Municipal Court of the City of Tallahassee, Florida, and the convictions were affirmed by the Circuit Court. As pointed out in the Petition for Writ of Certiorari and in Petitioners' Reply Brief filed herein, the Circuit Court is the highest court of the State of Florida in which a decision could be had within the meaning of 28 U.S.C. 1257.

QUESTION PRESENTED

Where a group of Negro and white clergymen, traveling in interstate commerce, gather at a municipally-owned and operated airline terminal building, with the announced purpose of determining whether the restaurant and other facilities in the building are racially unsegregated; and where the facilities are in fact segregated in favor of white persons only; and where a crowd gathers outside the terminal building and voices belligerent objection to the clergymen's views and purposes; and where the clergymen do not utter words of incitement or interfere with any busi-

ness of the terminal; and where the police arrest the clergymen for unlawful assembly, but arrest no one in the hostile crowd; did the subsequent convictions for unlawful assembly constitute (1) a denial of due process of law; (2) an abridgement of freedom of speech and freedom of assembly; (3) a violation of the interstate commerce clause; and (4) a denial of the equal protection of the laws?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Section 1 of the Fourteenth Amendment and the Interstate Commerce Clause of the Federal Constitution.

2. Article V, § 6(3) of the Florida Constitution, which provides, in pertinent part, that:

> "the Circuit Courts . . . shall have final appellate jurisdiction . . . of all cases arising in municipal courts . . . "

3. Florida Statutes, § 870.04, which provides in pertinent part as follows:

> "If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality . . . any police officer . . . shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately

and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody . . . . "

4. Florida Statutes § 332.08, which provides in pertinent part that:

" . . . a municipality which has established . . . airports . . . or which has acquired or set apart or may hereafter acquire or set apart real property for such purposes, is hereby authorized . . .

(3) . . . to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities; provided, that in each case in so doing the public is not deprived of its rightful equal and uniform use thereof."

5. § 28-38 of the 1957 City of Tallahassee Code, which provides as follows:

"It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor, and the commission of any such acts is hereby forbidden." (R. 152)

STATEMENT OF THE CASE

This appeal is from a conviction of Petitioners for unlawful assembly. The City of Tallahassee charged that on June 16, 1961 the Petitioners unlawfully assembled in

the Tallahassee Municipal Airport in that they "met together to commit a breach of the peace, acting together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group airline reservations on the two (2) operating airline schedules departing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace", and that while so assembled a police officer went among them and commanded them to disperse, and they refused to obey the officer's command. (R. 1)

The charge was made and the convictions were had pursuant to § 23-38 of the 1957 City of Tallahassee Code, which incorporated by reference the State unlawful assembly statute, Florida Statutes, § 870.04, *supra*. (R. 157)

Petitioners were tried in the Tallahassee Municipal Court on June 22, 1961. The trial court denied Petitioners' several motions to quash and dismiss the charges (R. 4; 75), found the Petitioners guilty of unlawful assembly, as charged, and ordered them to pay fines of $500.00 each or alternatively to serve sixty days each in the city jail. (R. 144) Petitioners thereupon filed an appeal to the Supreme Court of Florida, which Court ruled that it lacked jurisdiction to entertain the appeal and transferred the cause to the Circuit Court (R. 153), which subsequently affirmed the judgments of the Municipal Court. (R. 156)

Petitioners, comprising a party of Negro and white

clergymen, had set forth together from Washington, D. C. to cities in several southern states for the purpose of determining whether certain interstate transportation facilities were available on an integrated basis for Negroes, and to identify themselves publicly with those groups opposed to practices of racial segregation. (R. 79, 95, 122, 126, 132) Petitioners left Washington, D. C. by bus and traveled to Tallahassee, Florida, passing through the states of Virginia, North Carolina, South Carolina, and Georgia en route. (R. 78, 79) Petitioners arrived at the Greyhound bus terminal in Tallahassee on June 15, 1961 and were met by a hostile crowd of persons who resented their presence and the purpose of their trip and who threatened them with mob violence. However, Petitioners were protected from this crowd by the local police at the bus terminal. (R. 8, *et seq.*) Meanwhile, Petitioners procured airline tickets for their return trip to their final destinations at New York City and Newark, New Jersey (R. 78), and left the bus terminal for the Tallahassee municipal airport preparatory to embarking upon their return flight, arriving there in the early afternoon of June 15, 1961. (R. 80)

Upon their arrival at the airport, Petitioners were met by another hostile crowd which also voiced belligerent objection to their presence and to the purpose of their trip and threatened them with violence. (R. 44 *et seq.*) A large number of police officers were present, and they formed a cordon around the airport terminal building to separate the hostile crowd from the Petitioners. (R. 22)

When they arrived at the airport terminal building, Petitioners sought to be served food and drink at the restaurant located therein and which was publicly designated for the use of white persons only. They discovered, how-

ever, that this restaurant was closed. (R. 82) Petitioners then waited for the restaurant to re-open and in that connection cancelled their reservations for their return trips scheduled for that evening and made new reservations for the following morning. They waited in the terminal building until approximately 11:00 P.M. that evening and then left without having obtained any restaurant service. (R. 82)

On the following morning of June 16, 1961, Petitioners returned to the airport and while waiting in the terminal building for their return flight again sought service in the restaurant. (R. 82) However, the restaurant was still closed and Petitioners again cancelled their reservations and made new reservations for their return flights for later that day. Again a large, hostile crowd gathered at the airport, and while Petitioners were thus seated in the terminal building and awaiting the opening of the restaurant, the City Attorney accompanied by the Chief of Police and other police officers, approached the Petitioners, and read to them a proclamation which commanded that they disperse immediately or else they would be arrested for unlawful assembly. (R. 15-17; Def. Ex. 2, R. 146)

Petitioners declined to disperse, and they were thereupon arrested by the police and taken into custody. (R. 18)

Within the Airport terminal building, which is owned and operated by the City of Tallahassee (R. 17), there are two eating establishments. The restaurant mentioned above is a glass-enclosed dining room, which was conspicuously designated for the exclusive use of white persons; the other

is a small lunch counter which was conspicuously designated for the exclusive use of Negroes. (R. 33) There were also separate and segregated waiting rooms for Negro and white passengers, and separate and segregated rest-rooms in the terminal building. (R. 34) The restaurant facilities are leased by the City to The American News Company, Inc., a Delaware corporation, pursuant to a lease dated October 20, 1960. (R. 104) The manager of the restaurant testified that Negroes were never served in the glass enclosed dining room. (R. 105)

Petitioners' conduct was peaceable at the time of their arrival in Tallahassee, during the time they were at the bus terminal, while they were at the airport terminal, and at the time of their arrest, and at all times material to this cause they were quiet, dignified and polite in their words and acts. The station manager of Eastern Airlines at the Tallahassee airport testified that:

> "They were very polite and very co-operative asking for what they wanted and how they wanted it." (R. 38)

The Chief of Police testified that they were merely sitting in the white waiting room and that he did not see them creating a disturbance. (R. 49, 51)

A police lieutenant testified that he did not hear any of the Petitioners make any threats. (R. 66) The Petitioners themselves testified that they were peaceable. Rev. J. W. Collier, Jr. testified as follows:

> "Q During the period of time that ensued from the moment you first arrived at the airport until

that time will you describe your conduct to the Court?

"A We sat in the lobby, in the waiting room; we read the newspapers; we read books which members of our party had with us and we quietly conversed among us.

"Q Were you loud, noisy or boisterous in any manner?

"A At no time in any way.

"Q Did you at any time threaten any person or persons?

"A We did not." (R. 84)

All of the Petitioners are men of the cloth. (R. 77-135, *passim.*)

Contrasted with the conduct and character of the Petitioners, was that of the crowd gathered outside the airport. The Chief of Police gave the following testimony:

"A It was generally talked around the terminal that there was possibly going to be some violence if the defendants continued to stay there." (R. 44)

* * * *

"Q Mr. Stoutamire, the question was rather long, but, in effect, it was did you have reason to believe that the continued presence of the defendants at the airport building would tend to incite a riot, cause a disturbance and disorderly conduct?

* * * *

"A I did, based on the facts that on Thursday night, what happened there then, and what the defendants requested, that they be protected and that they had requested protection the following morning back to the airport and when I got there with the Freedom Riders they there asked if I would give them protection while they was there." (R. 47)

* * * *

"A As I stated before the publicity that had been in the newspapers and on radios prior to them coming to Tallahassee about what had happened in other towns, the newspapers and radios that was giving the information that they would be here at a certain time, people in my opinion in the City and in the County was somewhat enraged about the fact that they were coming." (R. 52)

The police lieutenant testified to the same effect. (R. 64-67), and the State Attorney also testified that:

"From talking to the people there and seeing the scene I knew that those people outside would have given trouble if the officers had not been present to take care of the situation." (R. 73)

Notwithstanding the foregoing, however, the police made no effort to disperse this crowd (R. 64), and arrested no one in the crowd. (R. 50)

The Petitioners were at all times material to this cause passengers in interstate commerce and at all times

material to this cause possessed interstate airplane tickets and reservations. (R. 37, 41, 78)

As noted above, the announced purpose of the Petitioners' trip was to determine what facilities were available to Negroes on an unsegregated basis in the several transportation terminals they visited during the course of their trip and make known their opposition to racial segregation in such facilities. Thus Petitioner Collier testified:

> "A There was a two-fold purpose: First, we wanted to ascertain whether or not there were facilities available on an integrated basis to interstate passengers in waiting rooms, in restrooms, in eating facilities in the terminals through which we would pass.
>
> "Secondly, we wanted to bear our witness as ministers, rabbis and clergymen to the struggle to obtain these rights guaranteed us by the Constitution." (R. 79)

Petitioners Dresner, Freedman and Hartmire all testified to the same effect. (R. 95; 122; 132)

Notwithstanding the fact that the airport and the terminal building located thereon are owned and operated by the City of Tallahassee, the city and its lessee jointly maintain a policy of racial segregation in the restaurant facilities (R. 33-34; 105), and the lunch counter available to Negro passengers was an admittedly unequal facility. (R. 138-139) Moreover, these eating facilities were segregated notwithstanding the fact that the restaurants, together with the restrooms and waiting rooms, all formed an integral part of the airport terminal building. (R. 34; 87)

Although the white restaurant had been open and serving the white public prior to the Petitioners' arrival, it was closed during the entire time the Petitioners were in the terminal building and did not reopen until the Petitioners had left. Both the restaurant manager and the city manager testified that the restaurant was closed for two reasons: first, to repair certain refrigeration equipment, and secondly to avoid possible violence. (R. 102; 136-141)

SUMMARY OF ARGUMENT

1. The City failed to present evidence establishing the requisite elements of the offense of unlawful assembly; hence the convictions, without evidence, violated due process of law. Further, since there was no evidence of unlawful assembly, there was no adequate state ground for the convictions. Petitioners' conduct was peaceable at all times, and they uttered no words of incitement. The fact that others in the vicinity violently resented their objectives and sentiments regarding desegregation does not justify the convictions for unlawful assembly. Further, even though the Petitioners were in a public building, there is no evidence that they interfered in any way with the business or activities of the terminal building, the airlines, or any other passengers.

2. On the other hand, even assuming that the judgments of the Municipal Court and the opinion of the Circuit Court establish that under Florida law the offense of unlawful assembly was made out in the circumstances of this case, the convictions would necessarily be in violation of the rights of freedom of speech and assembly as guaranteed by the due process clause of the Fourteenth

Amendment. Petitioners assembled peaceably within the terminal building to protest illegal conduct by the City and the lessee-restaurant within the terminal building itself, i.e., their policies of racial segregation, and did so without interfering with the normal business of the terminal building, or the airlines, or other passengers. Consequently, Petitioners' conduct cannot be said to have presented a clear and present danger of any substantive evil, or to any substantial interest of the City, which could have justified such a denial of freedom of speech and assembly. Moreover, the fact that Petitioners' peaceable conduct, which protested the illegal practices of the City and its lessee, may have been the reason for the gathering of a hostile crowd, did not warrant their arrest and convictions, since Petitioners did not utter any words of incitement.

3. Since there was no city ordinance providing reasonable times for assemblies of persons within the terminal building, Petitioners had the right to so assemble there (a) so long as they did not interfere with the facilities of the terminal building, or the airlines, or other passengers; (b) since they all had flight reservations, and therefore legitimate business, in the terminal building; and (c) since the terminal building itself was the very locus of the unlawful racial segregation which the Petitioners were protesting.

4. The arrests and convictions herein constituted an undue burden on interstate commerce in that the City unlawfully interfered with Petitioners' rights of peaceful and unfettered travel in interstate commerce.

5. The actions of the police and cit yofficials in ar-

resting and convicting Petitioners, who were peacefully demonstrating against unlawful segregation and who were peacefully seeking unsegregated food service, and in failing and refusing to arrest a single person in the violent mob outside the terminal building, discriminatorily applied the City ordinance and the Florida unlawful assembly statute, and thus denied Petitioners the equal protection of the laws.

ARGUMENT

I.

Petitioners were peaceable and orderly at all times; hence, there was no evidence whatsoever to support the convictions below for unlawful assembly, and therefore Petitioners have been denied due process of law under the Fourteenth Amendment.

As stated in the Circuit Court's Opinion (R. 157), Petitioners were charged and convicted pursuant to §23-28 of the 1957 City of Tallahassee Code which incorporated by reference Florida Statutes, §870.04, *supra*. The gravamen of the charge, of the City Attorney's proclamation, and of the foregoing statute, is the offense of unlawful assembly. The Statute does not define the offense and it does not appear that the Florida Supreme Court has ever defined it or has ever interpreted this or any similar statute. Consequently, it is necessary to have recourse to the common law definition. *People* v. *Perry*, 193 N.E. 175 (NY., 1934) In the leading case of *State* v. *Butterworth*, 142 A. 57; 58 A.L.R. 744 (N.J., 1928), the Court stated that at common law:

> "in order to constitute the offense of unlawful assembly, it must appear that there was a common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, and have a natural tendency to inspire rational, firm, and courageous persons in the neighborhood with well grounded fear of serious breaches of the public peace." 142 A. 57, 60.

That case involved the arrest of some 1,500 to 2,000 persons assembled to protest alleged suppression of union activities. The Court reversed the convictions and stated that:

> "Neither of the officers related a single act or alarming circumstance done or created by any one of the defendants or of any act threatening the public peace done by any of the persons assembled there, or which was of an unusual, boisterous, or disorderly nature." 142 A. 57, 60.

In the leading English case of *Beatty* v. *Gillbanks*, 47 L. T. Rep. N.S. 194; 15 Cox C.C. 138; 9 Q.B. 308 (1882), the defendants were members of the Salvation Army, which on previous occasions had paraded through an English town and collided with an antagonistic organization known as the "Skeleton Army", and great disorder had ensued. Thereafter, and notwithstanding an official notice directing all persons to abstain from assembling to the disturbance of the public peace, defendants led another procession through the streets, and were surrounded by a "tumultuous

and shouting mob of some hundred persons". The police ordered the defendants to disperse, but they refused, and they were arrested and convicted of unlawful assembly to the disturbance of the public peace. On appeal the convictions were set aside. The Appellee contended that similar parades in the past had resulted in riots, and that the defendants knew that such would occur if they paraded again. In reply, the Court declared that:

> "everyone must be taken to intend the natural consequences of his own acts, and it is clear to me that if this disturbance of the peace was the natural consequence of acts of the appellants, they would be liable, and the justices would have been right in binding them over. *But the evidence set forth in the case does not support this contention: on the contrary, it shews that the disturbances were caused by other people antagonistic to the appellants, and that no acts of violence were committed by them.*" 9 Q. B. 308, 311-312. (Emphasis supplied)

* * * *

> "What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, *that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a position*, and the question of the justices whether the facts stated in the case constitute the offence charged

> in the information must therefore be answered in the negative." 9 Q. B. 308, 312-313. (Emphasis supplied)

Accord: *Reg.* v. *Clarkson*, 17 Cox's Criminal Law Cases 483 (Eng. 1892).

The *Beatty* case is essentially on all fours with the case at bar, for there is not a scintilla of evidence in the record that Petitioners' conduct was anything but peaceable and orderly. Petitioners submit that it is an outrageous application of the doctrine of unlawful assembly to convict peaceable persons simply because others, who belligerently object to their presence, but who are in no way threatened with any personal or proprietary damage, threaten to become disorderly. Such has not been the law of unlawful assembly and so to distort it in this case would be to allow a conviction to stand without evidence to support it and in violation of due process of law. *Taylor* v., *Louisiana*, 370 U.S. 154; 8 L.Ed.2d 395; 82 S.Ct. 1188 (1962); *Garner* v. *Louisiana*, 368 U.S. 157; 7 L.Ed.2d 207; 82 S.Ct. 248 (1961); and *Thompson* v. *City of Louisville*, 362 U.S. 199; 4 L.Ed.2d 654; 80 S.Ct. 624 (1960). Petitioners point out that in *Taylor*, the Court found that there "was no evidence of violence"; that the record "shows that petitioners were quiet, orderly, and polite"; and that "the only evidence to support the charge was that petitioners were violating a custom that segregated people in waiting rooms according to their race, a practice not allowed in interstate transportation facilities by reason of federal law." 370 U.S. 154, 155-156; 8 L.Ed.2d 395, 396.

The Court will also note that the language of Florida Statutes §870.04, *supra*, is directed at persons "unlawfully,

riotously, or tumultuously assembled." Since Petitioners were not assembled "unlawfully" within the meaning of the common law as noted above, and since the record shows that they were not assembled "riotously or tumultuously", the convictions were not supported by evidence to make out the offense described by the Florida statute.

Finally, the Circuit Court in its opinion made certain assumptions concerning the effect of the Petitioners' conduct which are in no way supported by the record. The Circuit Court asserted that the facilities of the terminal building were denied to other persons, that the airline was inconvenienced, and that other would-be travelers were denied space on air flights. (R. 164, 165) However, there is absolutely no evidence in the record that any persons having business in the terminal were inconvenienced or denied the use of the facilities or services of the airline, or that any other passengers were in any way inconvenienced. Certainly as the court indicated in *Garner*, the Circuit Court could not take judicial notice of such presumed "facts" without violating due process of law. 7 L.Ed. 2d 207, 219.

Petitioners submit, therefore, that there was not an adequate state ground for the convictions, and that the convictions without evidence, violated due process of law.

II.

The convictions constituted a violation of Petitioners' rights of freedom of speech and freedom of assembly as guaranteed by the Fourteenth Amendment.

Even assuming, *arguendo*, that Petitioners' conduct could be deemed to have constituted a common law or statutory crime under Florida law, nevertheless their convictions cannot be squared with the rights of freedom of speech and freedom of assembly guaranteed by the Fourteenth Amendment. The announced purpose of their trip was to determine whether restaurants and other facilities in interstate transportation terminals were available to Negroes on an unsegregated basis, and they assembled and demonstrated peacefully to communicate their opposition to these illegitimate practices of racial segregation. Their objectives were clearly lawful, since "no State may require racial segregation of interstate or intrastate transportation facilities." *Bailey* v. *Patterson*, 369 U.S. 31, 33; 7 L.Ed.2d 512, 514; 82 S.Ct. 549 (1962); *Turner* v. *City of Memphis*, 369 U.S. 350; 7 L.Ed.2d 762; 82 S.Ct. 805 (1962); *Baldwin* v. *Morgan*, 287 F.2d 750 (5th Cir., 1961); *Henry* v. *Greenville Airport Commission*, 279 F.2d 751 (4th Cir., 1960); *Derrington* v. *Plummer*, 240 F.2d 922 (5th Cir., 1956); *Coke* v. *City of Atlanta*, 184 F.Supp. 579 (N.D. Ga., 1960); Cf. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715; 6 L.Ed.2d 45; 81 S.Ct. 856 (1961).

Indeed, the action of the City officials and the American News Company in maintaining segregated restaurant facilities was in blatant violation of the law of the State of

Florida, viz., Florida Statutes §332.08(3) which authorizes municipalities to:

> "confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities; *provided, that in each case in so doing the public is not deprived of its rightful equal and uniform use thereof.*" (Emphasis supplied)

If any further or final proof of the legitimacy of this Freedom Ride were needed, it was clearly provided by the case of *Brooks* v. *Tallahassee*, 202 F. Supp. 56 (N.D. Fla., 1961) where, subsequent to the convictions below, suit was brought against the City of Tallahassee to enjoin any further racial segregation in the Tallahassee airport terminal itself and appropriate injunctive relief was granted by the District Court.

Since the Petitioners' objectives were legitimate and their assembly was peaceable, since there is no evidence that their assembly interfered with the normal functions of the terminal building, or the operations of the airlines, or with other passengers, can we say that they created such a clear and present danger of any substantive evil or to any substantial municipal interest which could have justified their convictions? The complaint of the Circuit Court, the Municipal Court and the City officials appears to be two-fold: (1) that there was danger of public disorder because of Petitioners' locally unpopular views on racial desegregation; and (2) that the assembly, having taken place in the airport terminal building, wrongfully interfered with the facilities of that building.

The short answer to the first objection is that, absent the use of words of incitement, the mere fact that the announcement of unpopular views may provoke others to commit or threaten to commit acts of disorder in no way justifies state action in derogation of the rights of freedom of speech and freedom of assembly. *Edwards* v. *South Carolina*, 372 U.S. 229; 31 Law Week 4225 (1963); *Cantwell* v. *Connecticut*, 310 U.S. 296, 84 L.Ed. 1213; 60 S.Ct. 900 (1940); *Terminiello* v. *Chicago*, 337 U.S. 1; 93 L.Ed. 1131; 69 S.Ct. 894 (1949); *De Jonge* v. *Oregon*, 299 U.S. 353; 81 L.Ed. 278; 57 S.Ct. 255 (1937); *CORE* v. *Douglas*, 31 Law Week 2571; ___F.2d___ (5th Cir., 1963); *Nesmith* v. *Alford*, 31 Law Week 2622; ___F.2d___ (5th Cir., 1963); *Sellers* v. *Johnson*, 163 F.2d 877 (8th Cir., 1947); *Rockwell* v. *Morris*, 211 N.Y.S.2d 25; aff'd 215 N.Y.S.2d 502 (1961); Cf. *Cooper* v. *Aaron*, 358 U.S. 1, 3 L.Ed.2d 5; 78 S.Ct. 1401 (1958).

As to the second objection, Petitioners submit that since there was no statute or ordinance in effect regulating the time, place and manner of public assemblies in the terminal building, the Petitioners, having acted and assembled peaceably and for a legal objective, had the right to assemble and demonstrate in the terminal building, since it was the very site of the evil of which they complained. In *Edwards* v. *South Carolina*, *supra*, the Petitioners comprised a group of 187 Negroes who had assembled on the grounds of the South Carolina State House and a crowd of 200 to 300 onlookers had collected around them. This Court stated:

> "We do not review in this case criminal convictions resulting from the even-handed application of a precise and narrowly drawn regulatory stat-

> ute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case. See *Cantwell* v. *Connecticut*, 310 U.S. 296, 307-308; *Garner* v. *Louisiana*, 368 U.S. 157, 202 (concurring opinion). These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition.' And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." 31 Law Week 4225, 4227.

Compare *Schneider* v. *Irvington*, 308 U.S. 147; 84 L.Ed. 155; 60 S.Ct. 146 (1939) and *Kunz* v. *New York*, 340 U.S. 290; 95 L.Ed. 280; 71 S.Ct. 312 (1951), where the Court upheld the right of speech and assembly in such public and municipally-owned areas as streets and parks.

In *Niemotko* v. *Maryland*, 340 U.S. 268; 95 L.Ed. 267; 71 S.Ct. 325 (1951), the appellant had been convicted of disorderly conduct for holding a meeting of Jehovah's Witnesses in a public park without a permit. There was no city ordinance regulating the use of the parks, and the Court stated that:

> "The conclusion is inescapable that the use of the

> park was denied because of the City Council's dislike for or disagreement with the Witnesses or their views. The right to equal protection of the laws, in the exercise of those freedoms of speech and religion protected by the First and Fourteenth Amendments, has a firmer foundation than the whims or personal opinions of a local governing body." 340 U.S. 268, 272; 95 L.Ed. 267, 271.

So, in the case at bar, "the conclusion is inescapable" that the City's interference with Petitioners' assembly was the result of the unpopularity of their views. This is made eminently clear from the trial court's views on "public order" made at the conclusion of the trial:

> "Gentlemen, it is not my business to lecture but I want to assure you that if I thought for one minute or if the facts in this case supported the thought for one minute that you all came here on a noble, Christian purpose and had acted accordingly when instructed to vacate and leave that you would not be here. I am not attempting to change wish that you would stop and think this: When you do get back home to your respective cities that you would check the criminal rates and the prostitution rates and the racial strife as compared to what you find in Tallahassee and then when you have cleaned up your own bailiwick or whatever it is, then we would welcome your suggestions.
>
> "Until that time I think you have more than you can do at home. You came here for the sole

purpose of forcing your opinions and your views on this community. No matter how noble your reasoning sounds to you or how you have testified in this court it all boils down simply to that fact. You all have traveled a thousand miles in order to be deprived of something that you had at home already and then you get all of the United States embroiled in something." (R. 145)

III.

The arrests and convictions herein constituted an undue burden on interstate commerce in violation of the interstate commerce clause of the Federal Constitution.

This Court has held that the states may not impose unreasonable restraints on passengers traveling in interstate commerce and undue burdens on such travelers have been held to be unconstitutional. *Morgan* v. *Virginia*, 328 U.S. 373; 90 L.Ed. 1317; 55 S.Ct. 1050 (1946); *Edwards* v. *California*, 314 U.S. 160; 86 L.Ed. 119; 62 S.Ct. 164 (1941).

In the case at bar, Petitioners were passengers in interstate commerce, they were peaceful in their conduct at all times in the course of their travel, and the purpose of their trip was perfectly lawful. Certainly the City had no such legitimate interest in convicting Petitioners which could have justified the restraints it imposed on their rights of peaceful and unfettered travel in interstate commerce.

Moreover, the City unlawfully interfered with Petitioners' right to eat, as guaranteed to passengers in transit

in interstate commerce. In *Boynton* v. *Virginia*, 364 U.S. 454, 463; L.Ed.2d 206, 212; 81 S.Ct. 182 (1960), the Court stated that:

> "Interstate passengers have to eat, and the very terms of the lease of the built-in restaurant space in this terminal constitute a recognition of the essential need of interstate passengers to be able to get food conveniently on their journey and an undertaking by the restaurant to fulfill that need."

Here, as in *Boynton*, the terminal restaurant was an integral part of the terminal facilities. (R. 34; 87) Further, the Petitioners testified at length as to their desire to eat at the restaurant. Petitioner Collier stated:

> "Our purpose was, inasmuch as there was time prior to the departure of the plane and since I among others had not eaten, to eat prior to leaving and to test the facilities as I indicated earlier." (R. 162)

Petitioner Collier further stated that his purpose in returning to the airport on the morning of June 16 was: "To be served in the restaurant prior to leaving." (R. 83) Petitioners Dresner, Warner and Hartmire testified to like effect. (R. 123; 126; 133)

Petitioners contend, therefore, that the City interfered with this right to eat, which for interstate passengers is a right recognized and protected by the Court's ruling in *Boynton* v. *Virginia, supra.*

IV.

The arrests and convictions herein constituted a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment.

The police and city officials in arresting and convicting the Petitioners, who were peacefully demonstrating against unlawful racial segregation and who were peacefully seeking unsegregated food service, and in failing and refusing to arrest a single person in the violent mob outside the terminal building, discriminatorily applied the city ordinance and Florida Statutes §870.04, and in violation of the principle announced by the Court in *Yick Wo* v. *Hopkins*, 118 U.S. 356; 30 L.Ed. 220; 6 S.Ct. 1064 (1886), where the Court held that:

> "The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

CONCLUSION

For the foregoing reasons Petitioners pray that the judgments below be reversed, that the convictions be set aside and that the charges be quashed and dismissed.

Respectfully submitted,

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By_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief for the Petitioners has, pursuant to Rule 33 (1) of the Rules of The Supreme Court of the United States, been served by air mail upon EDWARD J. HILL, Attorney for Respondent, 216 East Jefferson Street, Tallahassee, Florida, this _____ day of August, 1963.

_____

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMERE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners

vs.

CITY OF TALLAHASSEE,

Respondent.

BRIEF OF RESPONDENT

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September 20, 1963

INDE

Opinions Below .....

Question Presented .....

Florida Statutes and Ordinances In

Statement of the Case .....

Argument .....

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IN THE

Supreme Court

of the

United States

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners

vs.

CITY OF TALLAHASSEE,

Respondent.

BRIEF OF RESPONDENT

OPINIONS BELOW

1. While the opinion of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, is not reported, a copy of the same is set forth in full as Appendix C of Respondent's Brief in Opposition to Petition for Writ of Certiorari, on file in this Court.

QUESTION PRESENTED

Where ten (10) persons, (be they Negro or white, clergymen or laymen) assemble together pursuant to a prearranged plan to "demonstrate" in protest against some real or fancied "discrimination" against them, and the "demonstration" is programmed so that it inspires well-grounded fear in persons of reasonable courage in the community to fear that there will be breaches of the peace and that fear and alarm would be excited, may not municipal officials, under provisions of law permitting them to order the dispersal of an unlawful assembly, order those assembled to disperse, and upon failure to disperse arrest them?

FLORIDA STATUTES AND ORDINANCES INVOLVED

870.02, Florida Statutes, 1961, provides as follows:

870.02 UNLAWFUL ASSEMBLIES.—"If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars."

870.04, Florida Statutes, 1961, provides as follows:

870.04 MAGISTRATE TO DISPERSE RIOTOUS ASSEMBLY.—"If any number of persons, whether armed or not, are *unlawfully*, *riotously* or *tumultuously* assembled in any county, city or municipality, the sheriff or his

deputies, or any constable or justice of the peace of the county, or the mayor, or any commissioner, councilman, alderman, or police officer of the said city or municipality, or any officer or member of the Florida highway patrol, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly." (Emphasis supplied)

Sec. 23-4.1 of the 1957 City of Tallahassee Code, provides as follows:

Sec. 23-4.1. Assemblies—Unlawful, riotous, tumultuous; persons authorized to disperse or arrest summoning assistance.

(a) "If any person or persons, whether armed or not, are unlawfully, riotously or tumultuously assembled within the city, the mayor, any city commissioner or police officer or member of the police department of the city, whether such member be a regular or special police officer appointed for temporary service, *when in the opinion of* the said mayor, commissioner or police officer or member of the police department of the city, whether such member be a regular or special police officer appointed for temporary service, *the assembly of such persons shall tend to create a disturbance* or incite a riot or disorderly conduct within said city, the mayor, any city commissioner or any police officer or member of the police department of the

city, whether such member be a regular or special police officer appointed for temporary service, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the State of Florida and the City of Tallahassee command all the persons so assembled immediately and peaceably to disperse, and if such persons so commanded do not thereupon immediately and peaceably disperse, the city officers hereinabove named shall command the assistance of all persons in seizing, arresting, and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such person or persons refusing to obey such command, or in suppressing a riot or unlawful assembly, refuses or neglects to obey such command, or when required by the officers authorized by this section to issue such command to depart from the place, refuses and neglects to do so, he shall be deemed one of the persons unlawfully assembled and shall be prosecuted and punished as hereinafter provided by this section.

(b) *Any person refusing to obey* the command to disperse as provided under the terms of this section *shall be deemed guilty of disorderly conduct* and shall be subject to the penalties of this section as hereinabove provided.

(c) Any person violating any of the provisions of this section shall upon conviction thereof be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment not exceeding sixty (60) days, or by both such fine and imprisonment. Each and every violation of any provisions of this section shall constitute a separate offense." (Emphasis supplied.)

Sec. 23-38 of the 1957 City of Tallahassee Code provides as follows:

Sec. 23-38. STATE MISDEMEANORS.

"It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be

recognized by the laws of the State as a misdemeanor, and the commission of such acts is hereby forbidden.

Whosoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is therefor provided by the laws of the state, but in no case shall such penalty exceed a fine of five hundred dollars, or an imprisonment for more than sixty days, or both such fine and imprisonment in the discretion of the municipal judge."

STATEMENT OF THE CASE

This is an appeal from a conviction of Petitioners for unlawful assembly. The Respondent charged that on June 16, 1961, the Petitioners unlawfully assembled in the Tallahassee Municipal Airport in that they "met together to commit a breach of the peace, acting together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group air-line reservations on the two (2) operating air-line schedules departing Tallahassee on the said date, and on June 15, 1961; in meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace", and that while so assembled a police officer went among them and commanded them to disperse, and they refused to obey. (R.11)

In order to explain to this Court the background circumstances that led these Petitioners into Tallahassee, it should be stated that they are part of a group of clergymen from Connecticut, New York, New Jersey and Massachusetts, and are representative of several races and religious denominations. They met at Washington, D. C., for the purpose of participating in what was then currently known as a "freedom ride", or at least the Petitioners were called "freedom riders". Their avowed objec-

tive was to "test" the segregation and/or integration aspects of facilities afforded them in the several cities that they passed through in their journey, one of which was Tallahassee, Florida.

Petitioners traveled by Greyhound Bus from a point of departure in Washington, D. C., to terminate in Tallahassee, Florida,

Petitioners, and other members of their party, arrived in Tallahassee about 11:30 A.M., June 15, 1961, pursuant to advance information and publicity. In anticipation of the circumstances herein calculated to excite alarm in this community, and the danger to the tranquility and peace of this neighborhood, sufficient protection was provided for Petitioners at all times in the form of city police, highway patrolmen, sheriff's officers, and sheriff's bureau representatives. A large crowd gathered shortly after the arrival of this traveling group and in the opinion of the City Attorney, there was the possibility of danger to the peace and tranquility of the neighborhood at that time. The outside crowd was ordered to disperse, and it did disperse. The Petitioners ate at the bus station restaurant and finished about 2:20 P.M., and they thereupon departed to the Municipal Airport to enplane according to their reservations at 3:25 P.M.

At this point, it seems appropriate to call to the attention of this Court, that the initial group of these so-called "freedom riders" was eighteen in number and that eight of them departed Tallahassee as pre-arranged. The airport restaurant, at this time, was closed for repairs. The Petitioners, construed that they had been denied entrance to the airport restaurant, elected to stay in the airport terminal waiting room and in the vicinity of this restaurant until it should reopen. They apparently thought that they had been denied food service and they then cancelled their existing air line reservations and remained to be served at a time when the restaurant would be open.

Repairs to the restaurant were not completed immediately,

in fact, were not completed for several days, during part of which time these Petitioners continued to remain in the adjacent airport waiting room, making and cancelling air line reservations on the following schedule:

(a) June 15, 1961, Thursday, Eastern Air Lines Flight #268 to leave Tallahassee 3:45 P.M. All eighteen (18) freedom riders ticketed and confirmed. Petitioners held tickets, but cancelled prior to departure.

(b) June 16, 1961, Friday, Eastern Air Lines Flight #954 to leave Tallahassee 8:38 A.M., this space requested the previous day after 3:45 P.M. Confirmed as to all appellants at 8:35 P.M. on the 15th. Petitioners would not surrender tickets for correct ticketing. They cancelled their reservations at 8:15 A.M., June 1, 1961, prior to departure of the flight at 8:38 A.M.

(c) June 16, 1961, Friday, National Air Lines Flight #362 to leave Tallahassee 1:49 P.M., confirmed as to all appellants at 8:20 A.M. Petitioners not ticketed and cancelled their reservations about 12:00 Noon.

Thus it can be seen that these Petitioners, during the dates of June 15 and 16, 1961, held cancelled tickets only, and in no sense of the word were they interstate passengers, for any contractual relationship with the air lines had ceased to exist. These Petitioners cancelled reservations on Eastern Air Lines Flight #268 on the 15th, just prior to departure, and cancelled reservations on Eastern Air Lines Flight #954, fifteen minutes prior to departure. Their tickets were automatically cancelled when their reservations were cancelled for a particular flight. Petitioners never held tickets on National Air Lines. The reservations were made in good faith; Petitioners held the reservations and checked in at normal flight time, cancelled these reservations some seven or eight minutes before departure, and there was available space for them. (R.54,56,57)

Petitioners continued to occupy the airport waiting room

facilities under the protection of the law enforcement agencies of the City, County and State. This protection was requested and given. At near midnight on the 15th of June, 1961, the airport was closed and the Petitioners were returned to Tallahassee under police protection which they had requested, to spend the night, returning to the airport early the next morning, ostensibly to board Eastern Air Lines Flight #954 departing at 8:38 A.M. The restaurant was still closed. Petitioners thereupon cancelled their reservations on Eastern Air Lines at this time, Friday morning, June 16, 1961, at 8:15 A.M. (R.78)

As the morning of June 16, 1961, progressed, it became very obvious to persons of long and comprehensive experience in the law enforcement field, that the continued activity of the Petitioners in the airport waiting room was tending to create the very clear and present danger of a riot. Consequently, and in accordance with the statutes and ordinances, Petitioners were informed that their disorderly assembly was creating a disturbance which would incite a riot, and they were commanded to immediately and peaceably disperse; they refused to obey the order, and were placed under arrest.

During the entire period Petitioners were in Tallahassee, they were adequately protected from any hostile acts by any person or persons. However, they arrived in this City with the avowed purpose to "test" imaginary or imagined discriminatory acts or practices, and they had a common intent to attain this purpose, whether the same was done lawfully or unlawfully. Respondent contends and urges that the same was done in such a manner as to cause sane, firm and courageous persons in this community to apprehend a breach of the peace.

The Petitioners were charged as follows:

"BEFORE ME, JOHN A. RUDD, Judge of the Municipal Court of the City of Tallahassee, Florida, personally ap-

peared JAMES MESSER, JR., and EDW. J. HILL, who being sworn, say that on, to-wit: the 16th day of June, 1961, upon property owned and operated by the City of Tallahassee, Florida, and located in Leon County, Florida, namely, the Tallahassee Municipal Airport, ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN W. POLAND, JR., and PRISCILLA G. STEPHENS: COUNT I, Did then and there unlawfully assemble in that they did and they being more than three (3) persons, meet together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group air line reservations on the two (2) operating airline schedules departing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage of riot, or other breaches of public peace, and while so unlawfully assembled a police officer of said City did go among these persons so assembled, and making himself known to them and each of them, did in the name of the State and City, command those so unlawfully assembled to immediately and peaceably disperse, and they and each of them did then and there refuse and/or neglect to obey such command when given, contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida."

At the trial on the charges as set forth, the Municipal Court of the City of Tallahassee, Florida, found Petitioners guilty of unlawful assembly as charged. They, and each of them, were sentenced to pay a fine of $500.00 or in the alternative to serve sixty (60) days in the City Jail.

ARGUMENT

Respondent urges that the question of unlawful assembly is independent of race, creed, color, religion, clergy, profession, laity, interstate commerce, intrastate commerce, private ownership, governmental ownership, or any other factor than the danger to the tranquility and peace of a neighborhood or community, or to the body of persons who are called the public.

The record clearly reveals that the race of the Defendants, their religious denominations and educational backgrounds were more of a concern to Petitioners' Counsel during the trial than was the question of unlawful assembly and the exercise of lawful police power of Respondent, for as seen in the record:

"MR. SIMON: If your Honor please, may I *recall* Reverend Brown for just one question?

THE COURT: All right.

MR. SIMON: What is your color?

DEFENDANT BROWN: White." (R.222) (Emphasis supplied)

On redirect examination of the Witness Stone, one finds the zeal of Counsel to get the color of each defendant into the record so great that he directs his question to Defendant Warner in the courtroom while Defendant Stone is on redirect:

"Q. (By Simon) Reverend Stone, what is your color?

A. White.

MR. SIMON: Reverend Warner, what is your color?

DEFENDANT WARNER: White." (R.241)

Respondent urges that the question here presented be an-

swered affirmatively, and be stripped of all but the basic essential requirements of the law of unlawful assembly.

Since June of 1961, the practice of certain persons in this county has developed away from the so-called freedom rides, and has begun to manifest itself in what is now called "demonstrations". The newspapers, the radio, and the on-the-spot television cameras record for all to see the riotous, unlawful, disturbing conduct that is foisted on many communities in this country, both North and South, by persons seeking to enforce certain "rights" which are imagined to be theirs, in violation of the rights of other persons, in their property, in the conduct of their business, and in their right of peaceful worship. It would be useless to call to the attention of this Court, the activities of certain groups of persons in cities like Birmingham, Alabama, and other well-known cities in states like Maryland and South Carolina. Most recently demonstrations are taking place in New York State, Michigan and Illinois, all calculated to create a disturbance, incite to riot, and constitute conduct disorderly in every sense of the word. Respondent urges that its prompt activity, and its willingness to act, before such conduct on the part of these "demonstrators" reached the magnitude that it has now reached in many other cities of this country, is both laudable and commendable, and shows an exercise of constitutional duty to the protection of all persons.

These Petitioners are charged with unlawful assembly. Sections 870.02 and 870.04, Florida Statutes, 1961, and Section 23-4.1, City of Tallahassee Code, 1957, do not specify the specific elements of this offense. Consequently, we must resort to the cases to define this.

Regina v. *Vincent*, 9 Carrington and Payne (English) 91, defines unlawful assembly as any meeting assembled under such circumstances, according to the opinion of rational and firm men, *as are likely to produce danger to the tranquility and peace of the neighborhood.* (Emphasis supplied)

State v. *Butterworth*, 142A. 57; 58 A.L.R. 744, (N.J.,1928), the court stated, at page 59:

> "And it has been well laid down by a very learned judge that *any meeting assembled under such circumstances as, according to the opinion of rational and firm men are likely to produce danger* to the tranquility and peace of the neighborhood is an unlawful assembly and in viewing this question the jury should take into their consideration the way in which the meetings were held, the hour at which they met and the language used by the persons assembled, by those who addressed them and then consider where the firm and rational men, handling their families and property there would have reasonable ground to fear breach of the peace, as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage." (Russell, on Crimes and Misdemeanors, Edition of 1845, at page 272) (Emphasis supplied)

The Court emphasized in the above statement what it considered as essential ingredients, at common law, to constitute the indictable offense of unlawful assembly; significantly illustrating the futility of attempting for future guidance to adopt an inflexible definition of all circumstances and conditions which might arise in the course of human events. Each case largely and necessarily depends upon the object and character of the meeting, and whether or not the overt acts done by the participants therein, pursuant to a common understanding, are of such a nature as to inspire in persons of reasonable firmness and courage well-grounded fear of a riot, rout, affray or other breach of the public peace.

Respondent contends that the "object and character of the meeting" were sufficient in the minds of "persons of reasonable firmness and courage" to cause them to fear a breach of the peace.

Respondent argues that the meeting of these "freedom riders" in Tallahassee was attended with sufficient circumstances which were calculated and designed to excite alarm. Petitioners came to Tallahassee with an avowed purpose to demonstrate against the things that they did not like, and without orderly resort to the Courts for relief, and this type of "demonstration" and assembly is unlawful. *Regina* v. *Neale*, 9 Carrington and Payne 431 (English), says, at page 432:

> ".....the people of the town were most seriously alarmed."
>
> "That such an assembly was an unlawful assembly could not for a moment be doubted, because every assembly to the terror of her Majesty's subjects was an unlawful assembly, and though there be no breach of the peace, if the assembly is of such a nature as to cause alarm, *no one can tell where it will end, or what will be its consequences, and the law will not allow such an assembly*." (Emphasis supplied)

Quoting further from *Regina* v. *Neale*, Page 436,

> "But all of these cases [of assembly] admit of a variety of shades, because an assembly may be such that though, up to the time the magistrate goes to it, there may be no breach of the peace, yet it may be *so far verging towards a riot, that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly*." (Empnasis supplied)

Thus Respondent, in the exercise of its police powers, through its designated officers, acted promptly, and in the best interest of its citizens.

City of Tallahassee Code, 1957, Sec. 23-4.1, clearly adopts the common law element of opinion in anticipation of trouble likely

to cause disturbances. Petitioners would have an outbreak of trouble, before law enforcement steps in; then it is too late.

The common law and the City Ordinance of Tallahassee actually define the offense of unlawful assembly, the elements of which are:

(1) That persons are assembled,

(2) That in the opinion of the mayor or a police officer, such assembly shall tend to create a disturbance or incite a riot or disorderly conduct,

(3) That the mayor or a police officer command such persons to disperse,

(4) That those persons fail to disperse.

MR. JAMES MESSER, JR., City Attorney, and a special police officer, testified as follows:

Q. Mr. Messer, is it your opinion that there was a possibility of danger to the peace and tranquility of that neighborhood at that time?"

A. "There was." (R.29)

Mr. Messer had already testified that several uniformed officers, officers in plain clothes, a highway patrolman and the sheriff of Leon County accompanied by two deputies and representatives of the (Florida) Sheriff's Bureau (R.26) were on hand in grave anticipation of trouble, and this reflects interest and concern in the activity of these Petitioners by others than the City and County authorities, as the Governor of the State of Florida (R.42) had notified and employed the state patrol. The record also indicates some desire by the Attorney General of the United States to avoid the Tallahassee activity by these Petitioners. (R.43,44)

Respondent urges that this Court can take judicial notice of the fact that "demonstrations" and "protests" and "tests" of this kind are pregnant with danger to a community, and should be condemned; the fact that certain of our laws are too slow for the desires of Petitioners is no cause for such activity.

Petitioners have denied endangering the peace and tranquility of Tallahassee, but such denial is unfounded as their "march" here is likened unto the "march" on Washington, D. C. of August 28, 1963, where and when reasonable fear was inspired in anticipation of such demonstration.

The Associated Press, generally accepted as being capable of reporting the news, stated in its syndicated releases of August 28, 1963, that "Washington [was] jittery on the eve of civil rights march". That "The vanguard began arriving in an increasingly nervous Capital yesterday [August 27th] for today's big 'march for jobs and freedom' ". It was further said that "Authorities.....were taking extraordinary precautions. For example, the District of Columbia commissioners barred the sale of liquor in Washington during the day". Respondent contends that if such an assembly had not already caused firm and courageous men in Washington, D. C. to fear breaches of the peace, then the standards and prescriptions of the offense are elevated to acts of homicide, assault, malicious mischief and similar acts. Tallahassee found itself in a similar circumstance, although varying only in magnitude.

Frank Stoutamire, Tallahassee Chief of Police, and veteran law enforcement officer of 35 years in Florida, says of the incident:

> A. "It was generally talked around the terminal that there was possibly going to be some violence if the defendants [Petitioners here] continued to stay there (R.90)
>
> Q. "....did you have reason to believe that the contin-

ued presence of the defendants in the airport building would tend to incite a riot, cause a disturbance and disorderly conduct.

A. "I did.....

".....I didn't see that they [Petitioners] had anything at the airport to do unless it was for some unlawful purpose." (R.93,94)

Mr. William D. Hopkins, a veteran State Attorney of Florida of the Second Judicial Circuit, encompassing the counties of Leon, Jefferson, Wakulla, Franklin, and Gadsden, for 15 years, stated:

"....From talking to the people there and seeing the scene I knew that those people outside would have given trouble if the officers had not been present to take care of the situation." (R.151)

Petitioners will say to this, why not arrest "those people outside?" Respondent quotes from *Regina* v. *Vincent* (supra):

"You will consider how far these meetings partook of that character to cause alarm to the body of persons who are called the public, and whether firm and rational men having their families and property there would fear a breach of the peace....." (Page 109)

There is no authority for the arrest of "the public" when persons assemble in such manner as to cause alarm and the fear of an explosive situation.

Petitioners cite *Beatty* v. *Gilbanks*, 47 L.T. Rep. N.S. 194, 15 Cox C.C. 138, 9Q.B. 308(1882) as being on all fours. Respondent recognizes that this Salvation Army, the forerunner to the present Salvation Army in these United States, is primarily an organization to foster good will, relief and religious assistance, and did not go about the countryside "testing" griev-

ances. Respondent prefers to cite from *Beatty*, where it says, at page 47:

> "....for he who is in fear of such assaults must provide for his safety by demanding the surety of the peace against the persons by who he is threatened, *and not make use of such violent methods*, which cannot but be attended with the danger of raising tumults and disorder to the disturbance of the public peace. 15 Cox's Criminal Law Cases 147 (Eng. 1882)" (Emphasis supplied)

Petitioners have provisions for redress against unlawful practices and may not "demonstrate" and "test", as in the case at bar, to the point of danger and disorder. If Petitioners fear "assaults" (acts of discrimination as they allege here) they must demand "the surety of the peace" (due process of law) rather than the activity condemned here.

Petitioners argue here, no scintilla of evidence. Yet the testimony in the record is sufficient to sustain the opinion of witnesses such as Stoutamire (R.86-104) and Hopkins (R.148-151) that the community was in grave anticipation of breaches of the peace; Petitioners knew what they were doing and knew, or should have known, the consequences of their acts.

This Court has said, in *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 96 L. ED. 367, 72S.Ct. 329:

> "....few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." (72 S.Ct.329, 330-331)

Part of this brief is written on August 28, 1963. As one of the writers was reading the morning papers, under a byline of a national news syndicate, the main headlines refer to the mass march of certain persons, predominately Negro, who are marching in groups of thousands of persons on Washington, D. C., the Capital of this country, in protest and to demonstrate. Certainly for no orderly purpose other than to show some type of brute or political strength. Respondent urges that such a demonstration and protest is an unlawful assembly, under any of the common law definitions of such offense, in that it does, in the opinion of rational and firm men, produce danger to the tranquility and peace of the community. It is likewise attended with circumstances calculated to excite alarm, as witnessed by the television pictures that show these mass marches, as attended by the grouping of masses of police and other governmental agency servants for the protection of the general population against the explosive character of such an unlawful assembly. Petitioners will answer this by saying that there was no intention on their part to excite alarm, no intention to assemble unlawfully, nor was there any unlawful purpose in their minds, nor were they intending to produce any danger to the peace of any neighborhood; however, Respondent likens this to a person walking through a powder house with a lighted faggot. Were such a powder house within the confines of this community, are we to allow some person to walk through the same with an open flame and then assert that he means no harm, that he intends no danger, that he will not allow a spark from his faggot to touch explosive material, nor is he likely to drop his flame in the excitement and push of such a venture? Respondent contends that the definitions of unlawful assembly as are given by the reported cases still obtain, and the manner of demonstration that is being acted by persons in this particular day and time does produce the essential elements of the offense. The mere assertion on the part of Petitioners that they intend no harm, is an invalid defense to an unlawful assembly. The magistrates, city officials and other officials charged with maintaining peace and tranquility are charged with the responsibility of anticipation,

and in the pursuit of their constitutional duty they are required to seek out those causes and elements that are likely to create such disturbance.

Generations ago this country suffered large losses by fire. At that time the main method of combating fire losses was to put out the fire after it got started. Now most advanced fire departments and agencies concentrate on fire prevention. Demonstrations such as the one in this instant case need prevention. Respondent urges that these Petitioners cannot come into a community, with an avowed purpose such as is stated in this record, and then with their hands open in supplication, say, "we mean no harm". It is the duty and responsibility of duly constituted officials to disperse assemblies as these, and not be afraid to act in the face of adverse public opinion from vocal minority groups.

Petitioners say (Brief 12) that "... even assuming that the judgments of the Municipal Court and the opinion of the Circuit Court established that under Florida law the offense of unlawful assembly was made out in the circumstances of this case, the convictions would necessarily be in violation of the rights of freedom of speech and assembly...." They say that they did not interfere with the normal business of the terminal building, or the air lines, or other passengers. This is not so. The whole climate of the area was charged with excitement; Petitioners congregated first here, then there. Conversing by phone with an assistant attorney general (of the United States) in Washington. Making and cancelling air line reservations according to the schedule herein. Certainly such activity by this group interfered with the normal business of the terminal, with the air lines and with other passengers. The testimony of Witness Canday (R. 53-79) is sufficient to show the ultimate confusion within this air line facility, by Petitioners.

Petitioners say their arrest was an undue burden on interstate commerce. Conversely, their *conduct* in the record is as undue

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a burden on interstate commerce as can be imagined, if it can be that they were in interstate commerce, and is a breach of the peace. Other persons have the right to unfettered travel, and to be free of mass reservations and cancellations that disrupt the programming of the rights of other persons to have flight space.

Petitioners criticize Tallahassee for refusing to arrest others than them. The pointed answer to that is that all other persons obeyed the directives of the authorities, except Petitioners. They parrot "equal protection", "due process", "interstate commerce", yet point with pride that subsequent to their demonstrations a suit was brought which resulted in the injunction against racial segregation at the Tallahassee airport. *Brooks v. Tallahassee*, 202 F.Supp. 56 (N.D. Fla., 1961)

Respondent says that if Petitioners were to "ascertain" the facilities and to "test" them, their mission was accomplished at 3:45 P.M., Thursday, June 15, 1961. Thereafter the suit, subsequently brought, was "due process".

Brooks does not prove the legitimacy of the conduct of Petitioners, as stated in their brief (P. 20), rather it proves the orderly processes of procedure to determine, in a court of law, the differences about which they complain, and the illegitimacy of the mass demonstration, which has grown so as to endanger the peace and tranquility of our nation's Capital, and, yes, our country as a whole.

Aaron v. City of Wausau, 74 N.W. 354, at page 355, states: "A distinguished text writer, adopting the definition taken from the Draft Report of the English Commissioners of 1789, says:

"An unlawful assembly is an assembly of three or more persons, who, with intent to carry out any common purpose, assembled, in such a manner, or so conduct themselves

when assembled, as to cause persons in the neighborhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or *will by such assembly* needlessly, and without any reasonable occasion, *provoke other persons to disturb the peace tumultuously*." 2 WHART CR. Law (10th Ed.) Sec. 1535. (Emphasis supplied)

CONCLUSION

Respondent concludes that every essential element of the offense of unlawful assembly has been proved, sufficient to uphold the trial court and the appellate court in this cause.

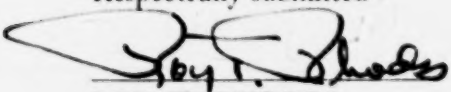
The trial court heard all witnesses, observed their candor, the manner in which they answered the questions propounded, saw the expressions on their faces and heard the inflections in their voices, and determined that a violation had been proven, pursuant to the applicable Florida statutes and the Tallahassee ordinances. The interjection of race, creed, and color of petitioners should have no bearing on the issues, though stressed by Counsel for petitioners.

The lawful exercise of a state's police power in the face of the eminent danger of a riot is not unconstitutional as being in violation of the "due process" clause or the right to the freedoms of speech and assembly.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Respondent has, pursuant to the Rules of the Supreme Court of the United States, been served by air mail upon ALFRED I. HOPKINS, 223 Southeast First Street, Miami, Florida, this 18th day of September, 1963.

Respectfully submitted



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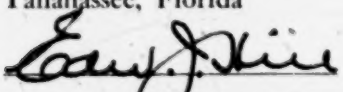

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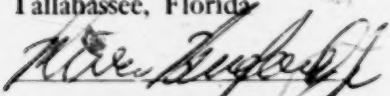

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE G. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

v.

CITY OF TALLAHASSEE,

Respondent.

On Writ of Certiorari To the Circuit Court of the Second Judicial Circuit In and For Leon County, Florida

---

REPLY **BRIEF FOR THE PETITIONERS**

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REPLY BRIEF FOR THE PETITIONERS

MAY IT PLEASE THE COURT:

The Respondent has failed to respond in its brief to the First and Fourteenth Amendment issues squarely raised by Petitioners.

However, Respondent has presented a Statement of the Case, which distorts the actual record, and misrepresents some of the facts. Petitioners herein attempt to set the record straight, with the view that the record in this case is an important element in arriving at a determination of the merits of Petitioners' cause.

1. "The Airport restaurant was closed for repairs (Resp. B. P. 6)."

The restaurant manager admitted that he had two reasons for closing down the restaurant (R 102) and it is clear that closing down for repairs is secondary to his reaction to Petitioners' efforts to end the discriminatory serving of meals at the air terminal restaurant.

2. "However, they (Petitioners) arrived with the avowed purpose to test **imaginary** or **imagined** discriminatory acts or practices * * * (Resp. B 8)." (Emphasis supplied)

The above statement is completely inconsistent with the record. The restaurant manager testified (R 102)

"Q. Is that restaurant divided into two sections?"
"A. Yes sir."

"Q. Are there any designations as to one or the other of those sections of the restaurant?"
"A. Yes sir."

"Q. What designations?"
"A. The lunch counter has a sign 'Colored' on it which is at the colored waiting room."

There is a plethora of other testimony (R 33-34, R 81, R 91) as to the actual existence of discriminatory acts and practices in Tallahassee, and finally, Respondent on Page 20 of its brief admits these practices by discussing **Brooks v. Tallahassee,** 202 F-Supp. 56 (N. D. Florida 1961) the case that subsequently ended segregation in Respondent's airline terminal facilities.

3. "Repairs to the restaurant * * * were not completed for several days * * * Resp. B 6 & 7)"

The restaurant manager stated that repairs were not completed at the time that the restaurant actually reopened (which was the day after Petitioners were jailed) (R 103). Coincidentally or intentionally, his testimony discloses that the restaurant was closed just for those periods when Petitioners were awaiting the opening of the restaurant to permit them to eat. The manager said (R 106)

"I closed the restaurant at 1:30 * * *

"Q. When was the next time that you opened the restaurant?"
"A. Saturday morning."

At the one-thirty referred to above by the witness, the Petitioners arrived shortly after that time and sought food. The following day was Friday, and early in the after-

noon of that day, Petitioners were unlawfully arrested. These coordinated closings were corroborated by the Eastern Airline Station Agent (R 36) and one of the Petitioners (R 143)

> 4. "Thus it can be seen that these Petitioners during the dates of June 15 and 16, 1961, held **cancelled** tickets * * * (Resp. B 7)." (Emphasis supplied)

The word "cancelled" means to make void or invalid. **Clegg v. Schvaneveldt** (Utah) 8 Pac (2d) 620, 621. At all time during Petitioners stay in Tallahassee, they held bona fide tickets from Florida to points beyond Florida, and the record is void of any evidence to the contrary.

> 5. "As the morning of June 16, 1961 progressed it became very obvious to persons of long and comprehensive experience in the law enforcement field, that the continued activity of the Petitioners in the airport waiting room was tending to create the very clear and present danger of a riot (Resp. B 8)."

Petitioners were not involved in any activity, they were merely sitting or standing in the terminal (R 84). As to the tendency for this activity to create a riot, respondent had heretofore stated (Resp. B 6)

> "* * * Sufficient protection was provided for Petitioners **at all times** * * *" (Emphasis supplied)

It is certainly true that the Respondent had provided

protection on a previous occasion (R 89). Inasmuch as there is no testimony whatsoever in the record of this case of a breakdown of law enforcement, one must assume that there was sufficient protection to quell a breach of the peace or prevent any harm to the community at Respondent's airport. However, Respondent again repeats their assurances of adequate protection when it states:

> "During the entire period Petitioners were in Tallahassee, they were adequately protected from any hostile acts by any person or persons (Resp. B 8)."

Assuming arguendo that respondent's statement is true, upon whom was the breach of the peace to be visited? Certainly not on Petitioners who were well guarded; but then if a breach of the peace was imminent from some other quarter, is it not implicit that Respondent's law enforcement officers had a duty to arrest those threatening to breach the peace?

> In **Edwards v. South Carolina** 372 U.S. 229; 31 Law Week 4225 (1963), this Court points out: "Police protection at the scene was at all times sufficient to meet any forseeable possibility of disorder".
>
> In **Wright v. State of Georgia** 83 S. Ct. 1240 (1963) where a group of Negroes were arrested for playing basketball in the park, this Court said: "* * * the possibility of disorder by others — could not justify exclusion of the Petitioners from the park. Thus Petitioners could not constitutionally be convicted for refusing to obey the officers."

IN REPLY TO ARGUMENTS OF RESPONDENT

I

While much of Respondent's brief dealt on matters not contained in this record (Resp. B 11, 15, 18-19), there remains several matters that require clarification: Respondent cites (Resp. B 11) **Regina v. Vincent,** 9 Carrington and Payne (English 1839) and **Regina v. Neale,** Carrington v. Payne 431 (English 1839) presumably to establish the common law of unlawful assembly. Assuming arguendo that these cases represent the common law, it is imperative to point out that the test of unlawful assembly as set forth in these cases by Respondent, includes the words

> "* * * assemble **under such circumstances** * * * as are likely to produce danger to the tranquility and peace of the neighborhood." (Emphasis supplied)

In the case of **Regina v. Vincent, Supra,** the factual circumstances clearly indicate a meeting of persons who were either meeting unlawfully, riotously or tumultuously. The Defendant's in that case belonged to a group called the "Chartists" who met in the town of Newport to talk of rebellion against the crown and with considerable show of violence. In the case of **Regina v. Neale, Supra,** the Defendants threw stones, used bludgeons and knives. The Court in summing up said, inter alia:

> "All these cases must depend on their own circumstances; and you would have to say in each, whether, under the particular circumstances,

> the magistrates were justified in resorting to the means they did."

It is such factors as these that clearly indicate that the common law version of unlawful assembly impliedly authorizes the usage of the words unlawful, riotous or tumultuous.

Thus in the City of Tallahassee ordinance (Resp. B 3) it is clear that the Petitioners must either assemble unlawfully, riotously or tumultuously, and that such words when used in this restricting sense is akin to the common law finding that, "the accused assembled **under such circumstances** as are likely to produce danger to the tranquility and peace ***." (Emphasis supplied)

The respondent (Resp. B 14) has endeavored to set forth the elements of the unlawful assembly but either by neglect or inadvertance has failed to include the requirements as setforth above.

In **Nesmith v. Alford** 318 F 2d 110, 120 (1963) the appellants had brought suit for false arrest, false imprisonment and malicious prosecution against certain police officers of the City of Montgomery, Alabama. The appellants who were of the white race, had been arrested by the appellees for eating lunch with some Negro citizens of Montgomery and had been arrested and charged with disorderly conduct. The Circuit Court of Appeals stated that:

> "*** there is no single Alabama case to indicate that the suspected threat of mob violence at the hands of law breakers may be avoided by ar-

resting those whose actions are perfectly peaceful and legally and constitutionally protected merely because such lawful and peaceful conduct provocatively incites the incipient mob."

"Great latitude is, and must be extended to states in the determination of what conduct constitutes a crime or in ascertaining guilt or innocence, but before there may validly be the imposition of criminal sanctions in the form of fine or imprisonment, or both, there must be a crime defined and a crime committed."

In conclusion Petitioners contend that there is no evidence as to any unlawful, riotous or tumultuous behavior on the part of the Petitioners. Indeed there is no evidence whatsoever of the existence of any crime committed by Petitioners.

II

With respect to Respondent's contentions, in reply to Petitioners claim that their conviction for unlawful assembly constituted a violation of their rights of freedom of speech and assembly; Petitioners submit that the record shows no interference with the normal business of the terminal, or the airlines, or other passengers; and as witness Cannady, the Eastern Airlines Station manager, stated (R 38)

"We have no complaint with their actions***.

They were very polite and co-operative ***."

That with regard to the law as to Petitioners rights in this instance, the Respondent's brief is barren of any legal argument in this regard, and Petitioners are of the opinion that the cases presented in their behalf in their original brief, adequately represent the existing law on this issue.

III

With respect to Respondent's argument that there were no denials of equal protection of the laws as guaranteed by the Fourteenth Amendment, Petitioners contend in their so-called "pointed answer" that other persons obeyed the directions of the authorities conflicts with Respondent's reasons for Petitioners arrest. Respondent's Chief of Police testified:

> "It was generally talked around the terminal that there was possibly going to be some violence if the Defendants continued to stay there. I never or don't know that any one particular person told me they were going to do anything but it was generally talked about (R 44)."

If indeed Respondent's knew (as they allege in their brief Resp. B 20) that all persons were going to obey their directives, then no lawful reason whatsoever existed for them to be concerned with Petitioners. Cf. **Wright v. State of Georgia, Supra.**

CONCLUSION

For the foregoing reasons Petitioners pray that the judgments below be reversed, that the convictions be set aside and that the charges be quashed and dismissed.

Respectfully submitted

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and
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Attorneys for Petitioners

BY_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief for the Petitioners has, pursuant to Rule 33 (1) of the Rule of the Supreme Court of the United States, been served by air mail upon EDWARD J. HILL, Attorney for Respondent, 216 East Jefferson Street, Tallahassee, Florida, Roy T. Rhodes, P. O. Box 128, Tallahassee, Fla., Rivers Buford, Jr., 404 Midville Moor Bldg., Tallahassee, Fla., this ____ day of October, 1963.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

v.

CITY OF TALLAHASSEE,

Respondent.

SUPPLEMENTAL MEMORANDUM OF LAW

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CITY OF TALLAHASSEE,

Respondent.

SUPPLEMENTAL MEMORANDUM OF LAW

In accordance with instructions given and leave granted by the Court during oral argument of this cause, Petitioners respectfully submit the within Supplemental Memorandum of Law on the question of whether there was available to them an adequate remedy in the Florida courts.

1. Article V of the Florida Constitution, insofar as it is germane to this cause, provides for a judicial hierachy

comprising the Supreme Court of Florida, the District Courts of Appeal, the Circuit Courts and the Municipal Courts. Article V, § 6(3) confers upon the Circuit Courts "final appellate jurisdiction . . . of all cases arising in municipal courts." There is no other provision of Florida law allowing any further appeal from such an appellate judgment of a Circuit Court. The only mode of further review of any such final appellate judgment of a Circuit Court is the limited review under so-called common law certiorari. It is important at the outset, therefore, to distinguish this kind of certiorari jurisdiction from all of the other kinds of certiorari and appellate jurisdiction exercisable within the Florida appellate system.

Article V, § 5(3) establishes the jurisdiction of the District Courts of Appeal. These courts are intermediate appellate courts, vested with general appellate jurisdiction, and were established pursuant to constitutional amendment adopted in 1956. Concurrently therewith, the jurisdiction of the Supreme Court of Florida, as set forth in Article V, § 4(2), was radically limited. Article V, § 5(3), which provides for the general appellate jurisdiction of the District Courts of Appeal, also authorizes such courts to issue writs of certiorari, but does not define the scope of such writs, and this definition must be gleaned from the case law which is discussed at length below.

Article V, § 4(2) vests the Supreme Court with a specially defined certiorari jurisdiction, viz.:

> "The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district

> court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, and may issue writs of certiorari to commissions established by law."

Obviously, the case at bar is not embraced within any of the foregoing classifications. In addition, § 4(2) vests the Supreme Court with jurisdiction to "review by certiorari interlocutory orders or decrees passing upon chancery matters which upon a final decree would be directly appealable to the supreme court." Article V, § 4(2) also vests the Supreme Court with jurisdiction to entertain appeals from District Courts of Appeal in certain limited cricumstances, namely, appeals "from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution." Again, none of the foregoing categories of certiorari or appeal jurisdiction are applicable to the instant case.

Proceedings styled certiorari are also available in Florida under limited circumstances for the purpose of supplementing a deficient record and, in certain extraordinary cases, for reviewing interlocutory orders in actions at law. See *Kilgore* v. *Bird*, 6 So.2d 541 (Fla., 1942).

In addition, Article V, § 6(3) vests the Circuit Courts with certiorari jurisdiction, and this is utilized, for example, in reviewing the orders of administrative agencies. See, for example, Florida Statutes §§ 176.16 and 176.17. Circuit Courts are also empowered to submit certified questions to the District Courts of Appeal under Rule 4.6

of the Florida Appellate Rules (31 Florida Statutes Annotated, Pocket Part, p. 129); however, nothing contained in that Rule, or in its predecessor, Rule 27 of the earlier Florida Supreme Court Rules, (31 Florida Statutes Annotated, p. 511), specifies that such certification is a condition precedent to the finality of a Circuit Court's appellate judgment. "The Rules make it clear that the certification is to be effected by the judge of the Circuit Court — not counsel. It is the judge's prerogative to decide whether he is to (1) rule upon the unique question himself, or (2) certify it." 9 Miami L.Q. 375, 382 (1955).

It is clear, therefore, that the only kind of appellate review that is available in Florida today with respect to a final appellate judgment of a Circuit Court exercising appellate jurisdiction over an inferior court, is so-called common law certiorari, and which, although provided for by the Florida Constitution, is nowhere defined therein. Jurisdiction to exercise this limited form of review over such final appellate judgments of the Circuit Courts is vested by Article V, § 5(3) in the District Courts of Appeal, and this supervisory jurisdiction under the present Florida Constitution is vested solely in the District Courts of Appeal. Thus, in *Robinson* v. *State*, 132 So.2d 3, 5 (Fla., 1961) the Supreme Court of Florida held that:

> " . . . this Court no longer has extensive power to issue so-called 'common law writs of certiorari' to review judgments of lower courts. This power is now vested in District Courts of Appeal and Circuit Courts by Article V, Sections 5 and 6, Florida Constitution. In situations in which review of a judgment or decree of a lower court is not otherwise provided for, the District Courts

> of Appeal are endowed with powers of review limited to a determination of whether the judgment constitutes a deviation from the essential requirements of the law. In a general way, this is the type of so-called common-law certiorari power exercised by this Court prior to the effective date of amended Article V, on July 1, 1957."

Likewise, in *Ramagli Realty Co.* v. *Craver*, 121 So.2d 648, 651 (Fla., 1960) the Florida Supreme Court stated that:

> "Amended Article V of the Constitution limits the power of the Supreme Court to issue writs of certiorari to the district courts in certain matters and to commissions established by law. The Supreme Court no longer possesses the power to issue so called 'common law writs of certiorari.' Such writs may be issued only by the district and circuit courts." (Fn. 9)

2. The writ of common law certiorari in Florida is one "which issues on *discretion* and not as a writ of right." (Emphasis supplied) *Brinson* v. *Tharin*, 127 So. 313, 316 (Fla., 1930). That being so, Petitioners therefore submit that under the rule announced by this Court in *Teamsters Union* v. *Lucas Floor Co.*, 369 U.S. 95; 7 L.Ed.2d 593; 82 S.Ct. 571 (1962), they were not required by 28 U.S.C. § 1257 to seek any further *discretionary* review in the Florida Courts as a predicate for filing their Petition with this Court. Petitioners further point out, however, that not even the limited *discretionary* power of the District Court was exerciseable in the instant case, and for the reasons set forth below.

3. The burden of Petitioners' initial Reply Brief filed in February of 1963 and addressed to the certiorari jurisdiction of this Court, was to show: (1) That common law certiorari in Florida directed to a final judgment of the Circuit Court is a limited mode of appellate review and is limited to a determination of whether the Circuit Court acted without jurisdiction or in violation of the essential requirements of law, and (2) that under the decisions of this Court, the availability of *full and complete* appellate review on all issues by the state tribunal below is the essential requirement in determining whether the state judgment below is final within the meaning of 28 U.S.C. § 1257. Since there is no issue as to the jurisdiction of the Tallahassee Municipal Court or the Circuit Court for Leon County in the premises, the only question remaining for discussion is the meaning of the phrase "the essential requirements of law". Petitioners understand this phrase to refer simply to matters of procedure. The oft-repeated statement in the Florida cases is that this phrase refers to procedural irregularities and does not embrace a further review of the substantive merits of a case. Thus, in *American National Bank of Jacksonville* v. *Marks Lumber & Hardware Co.*, 45 So.2d 336, 337 (Fla., 1950), the Supreme Court of Florida stated:

> "Here no contention is made of a want of jurisdiction in either of the lower courts. Was there an *illegality of procedure?* Bear in mind that to justify the issuance of certiorari the announced rule refers to *illegality of procedure*, not an erroneous proceeding. In determining whether there exists a departure in the essential requirements of law we ascertain whether the court proceeded consistent with the basic principles of

> law relating to the *procedure* to guide to an ultimate determination of the cause.
>
> • • • •
>
> "If peradventure it appears to some that the error was of sufficient magnitude as to cause a miscarriage of justice, it will still not justify the issuance of the writ to have a further review because that would pit the judgment of the Supreme Court against that of the Circuit Court. The Constitution never contemplated or provided for that. In this class of cases we are concerned with the *character* of error instead of its *degree*." (Emphasis supplied)

Likewise, in *Brinson* v. *Tharin*, 127 So. 313, 316 (Fla., 1930), the Florida Supreme Court said that:

> "The writ, confined to its legitimate scope, may issue within the court's discretion at any time to correct the *procedure* of courts wherein they have not observed those requirements of the law which are deemed to be essential to the administration of justice." (Emphasis supplied)

This specific limitation on the writ has been reiterated by at least two of the District Courts of Appeal in cases arising since the aforesaid constitutional amendment namely, *State v. Katz*, 108 So. 2d 60 (Fla. App., 1959) and *State* v. *Smith*, 118 So. 2d 792 (Fla. App., 1960). The reason for the limitation is clear: Article V, § 6(3) specifically states that the Circuit Courts shall have *final* appellate

jurisdiction over cases arising in Muncipal Courts. As the District Court said in *State* v. *Katz, supra,*:

> "Due regard for the plain language of the Constitution prevents this appellate court from entertaining a *second appeal.* The common law Writ of Certiorari was not meant for and may not be diverted to such purpose." 108 So. 2d 60, 61. (Emphasis supplied)

Likewise in *State* v. *Smith, supra,* the District Court stated:

> " . . . certiorari may not be used in this court for the purpose of securing a second appeal, *nor to produce the merits for review on appeal.*" 118 So. 2d 792, 795. (Emphasis supplied)

Petitioners in their Main Brief on the merits urged four points, namely, (1) complete absence of evidence and therefore a denial of due process under the Fourteenth Amendment; (2) violation of the rights of freedom of speech and assembly; (3) interference with interstate commerce; and (4) denial of equal protection of the laws. Petitioners therefore, raised no jurisdictional issues nor are they concerned with the matters of mere procedure. In the circumstances, therefore, Petitioners submit that following the entry of the Circuit Court's order affirming the Muncipal Court judgment, there was no further adequate state remedy available to them for complete vindiction of their Federal Constitutional rights, and for the reasons that:

(1) The so-called common law writ of certiorari is by nature and as defined by the cases a *limited* form of

review, and does not afford the opportunity of full and complete appellate review on all issues, substantive and procedural, which is the *sine qua non* of a final judgment within the meaning of 28 U.S.C. § 1257.

(2) The issues raised by Petitioners in their Assignments of Error and Main Brief before this Court are not matters of jurisdiction or procedure within the scope of the definition of common-law certiorari as set forth in the above-cited Florida cases.

4. Notwithstanding the rule announced in *American National Bank of Jacksonville* v. *Marks Lumber & Hardware Co.*, *Brison* v. *Tharin*, *State* v. *Katz*, and *State* v. *Smith*, *supra*, some of the cases have granted certiorari where there was an "entire absence of essential evidence with resulting material injury." See e. g., *Haile* v. *Bullock*, 91 So. 683 (Fla., 1922), distinguished in *Brinson* v. *Tharin*, *supra*. But even if it be assumed, *arguendo*, that the evidentiary issue raised by Petitioners might have been reviewed by the District Court of Appeal, nevertheless this feature of the case alone would not have formed a predicate for *full* review of all of the substantive issues raised by Petitioners. The logic of this Court's rule requiring an opportunity for full review is clear: if Petitioners were required to petition the District Court of Appeal for certiorari and if the District Court could only have reviewed the evidentiary issue, then Petitioners would have been precluded from raising the remaining, equally vital substantive issues in this Court, unless they were required to file *two* petitions in this Court, namely, one petition directed to the Circuit Court on the issues of freedom of speech and assembly, interstate commerce, and equal protection, and a second, and necessarily later, petition

directed to the District Court on the evidentiary issue. Surely, 28 U.S.C. § 1257 does not contemplate the filing, in a single case, of two petitions in this Court directed to two separate Florida tribunals, each on different levels of the appellate hierachy, and each of which petitions would necessarily reach this Court at widely separated points of time. Surely § 1257 does not require such bizarre appellate procedure, and clearly Petitioners are not required to risk abandonment of three of their four fundamental constitutional defenses merely because of vagaries of Florida appellate procedure. Cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; 2 L.Ed 1488; 78 S. Ct. 1163 (1958); *Wright* v. *Georgia*, 373 U.S. 284; 31 Law Week 4487 (1963).

5. Again, and notwithstanding the rule announced in *American National Bank of Jacksonville*, *Brinson* v. *Tharin*, *Katz* and *Smith*, *supra*, some of the Florida cases have added a further variant in the definition of common law certiorari namely, cases where the lower court failed to apply a "correct principle of law" to admitted facts. See, e. g., *Mathews* v. *Metropolitan Life Insurance Company*, 89 So. 2d 641 (Fla., 1956) and *Martin* v. *Powell*, 101 So. 2d 610 (Fla. App., 1958). But even this ostensible expansion of the scope of the writ appears to be simply another way of stating that there must be evidence to support the judgment. Cf. *Richard Store Company* v. *Florida Bridge & Iron, Inc.*, 77 So. 2d, 632 (Fla., 1955). But in any event, any such inconsistencies in the definition or exercise of common law certiorari jurisdiction should not affect this Court's jurisdiction. Petitioners were faced with the clear cut rule announced in *American National Bank of Jacksonville*, *Brinson*, *Katz* and *Smith*, *supra*, on the one hand, and with the murky pronouncements in such cases as *The*

Richard Store Company, ***Martin*** v. ***Powell*** and ***Haile*** v. ***Bullock***, *supra*, on the other. The Florida Constitution speaks of *final* appellate review in the Circuit Court, the cases speak out against *double appeals* and the courts consistently refer to the *limited* scope of common law certiorari jurisdiction. Nowhere have Petitioners found any case in Florida which would in any way support the proposition that full and complete appellate review would have been available in the District Court of Appeal with respect to *all* of the issues raised in their Assignments of Error and Main Brief. For the Respondent City of Tallahassee to contend otherwise would be for them to place Petitioners in precisely the same position as the petitioners in *N.A.A.C.P.* v. *Alabama*, *supra*, where the Court stated that:

> "such a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures to obtain appellate review, cannot avail the State here, *because petitioner could not fairly be deemed to have been appraised of its existence*. Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." 357 U.S. 449, 457; 2 L.Ed 2d 1488, 1497. (Emphasis supplied)

Clearly, Petitioners efforts here to seek vindication of all of their Federal constitutional rights, in reliance upon the oft-repeated rule that common-law certiorari refers only to procedural matters, should not be thwarted by any vagaries, novelties or inconsistencies of local appellate rules.

As Petitioners pointed out earlier, Respondent in its initial brief in opposition to the petition, contended that Petitioners must first seek relief from the District Court and thereafter from the Supreme Court of Florida before this Court could acquire jurisdiction. However, any such view would thoroughly emasculate the orderly appellate system provided by the Florida Constitution, and would establish the Supreme Court of Florida as the sole "highest court" under 28 U.S.C. § 1257 *in every case*, thereby depriving both the State Constitution and the Federal Statute of their logic and meaning.

CONCLUSION

For the foregoing reasons Petitioners respectfully submit that no further adequate state remedy was available to them within the meaning of 28 U.S.C. § 1257, and that this Court has jurisdiction to entertain these certiorari proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Supplemental Memorandum of Law has, pursuant to Rule 33 (1) of the Rules of The Supreme Court of the United States, been served by air mail upon EDWARD J. HILL, Attorney for Respondent, 216 East Jefferson Street, Tallahasse, Florida, this _____ day of October, 1963.

ALFRED I. HOPKINS

FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners,

vs.

CITY OF TALLAHASSEE,

Respondent.

RESPONDENT'S BRIEF ON QUESTION OF JURISDICTION

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November 2, 1963

IN THE

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INTRODUCTION

This Brief is filed pursuant to instructions to counsel by Chief Justice Warren during the course of oral argument in this cause.

JURISDICTION

The jurisdiction of this Court is sought to be invoked by the Petitioners under 28 USCA, Section 1257, under Petition for Writ of Certiorari, and under which the first clause of said section reads as follows:

> "Final judgments or decrees rendered by the *highest court of a state in which a decision could be had* may be reviewed by the Supreme Court as follows: . . ."

QUESTION

WAS THE ORDER AFFIRMING JUDGMENTS ENTERED BY THE CIRCUIT COURT OF LEON COUNTY, FLORIDA, AFFIRMING CONVICTIONS IN THE MUNICIPAL COURT OF THE CITY OF TALLAHASSEE A FINAL JUDGMENT RENDERED BY THE HIGHEST COURT OF FLORIDA IN WHICH A DECISION COULD BE HAD UNDER THE LAW OF FLORIDA WITHIN THE PURVIEW OF 28 USCA, SECTION 1257?

Respondent respectfully urges this question be answered in the negative.

STATEMENT OF THE CASE

These Petitioners were tried, found guilty, and sentenced in the Municipal Court of the City of Tallahassee for unlawful assembly. (R.144) Petitioners sought to appeal this conviction directly to the Florida Supreme Court. On Motion To Dismiss, the matter was remanded to the Circuit Court of the Second

Judicial Circuit for Leon County, in which the municipality of Tallahassee is located. (R.153-156) Thereafter, the Circuit Judge entered an Order Affirming Judgment on August 16, 1962. Nothing else transpired until a Petition for Certiorari, Brief of Petitioner, and certain portions of the Record were field with the Clerk of the District Court of Appeal, First District, State of Florida, on October 16, 1962, which was on the sixty-first day after the entry of the Order of the Circuit Judge. This abortive effort at filing the Petition for Certiorari in the appropriate District Court of Appeal was unaccompanied by the necessary filing fee, and consequently, although received, never formally filed in the office of the Clerk. These items were returned to Mr. Tobias Simon pursuant to his request, all as more fully appears from Appendix E to the Respondent's Brief in Opposition to the Petition for Writ of Certiorari heretofore filed in this cause.

Petitioners now seek to have this matter reviewed by the United States Supreme Court on certiorari.

ARGUMENT

It seems without question that in Florida, a Circuit Court's appellate decision in a case appealed from a Municipal Court may be reviewed by certiorari in a District Court of Appeal. The Circuit Courts of the state are the proper appellate forums for the various Municipal Courts; this is clearly spelled out in both the state Constitution and in certain supplementing Statutes. Article V, §6 (3), of the Florida Constitution reads in part: ". . . The Circuit Courts . . . shall have final appellate jurisdiction . . . of all cases arising in municipal courts . . .".

The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, which affirmed the judgments in these cases, is the primary trial court in Florida and has final appellate jurisdiction of all cases arising in Municipal Courts and no ap-

pellate proceedings lie in such cases from the Circuit Courts; but the Supreme Court and the District Courts of Appeal have express power to issue writs of certiorari which is a common law writ which issues in the sound judicial discretion of the Court to an inferior court, not to take the place of an appeal, but to cause the *entire record* of the inferior court to be brought up by certified copy for inspection in order that the superior court may determine from the face of the record whether the inferior court has exceeded its jurisdiction; or has not proceeded according to the essential requirements of the law in cases where no direct appellate proceedings are provided by law. *Davis et al vs. Strople* (*Fla. 1949*), 39 So.2d 468; also *Malone vs. The City of Quincy*, 66 Fla. 52, 62 So. 922, wherein certiorari is referred to in the following terms:

> "Certiorari is a common-law writ, which issues in the sound judicial discretion of the court to an inferior court, not to take the place of a writ of error or an appeal, but to cause the *entire record* of the inferior court to be brought up by certified copy for inspection, in order that the superior court may determine from the face of the record whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of the law, in cases where no direct appellate proceedings are provided by law. *Seaboard Air Line Ry. v. Ray*, 52 Fla. 634, 42 South. 714; *Jacksonville T & K W. Ry. Co. v. Boy*, 34 Fla. 389, 16 South. 2.90; *Hunt v. City of Jacksonville*, 34 Fla. 504, 16 South. 398, 43 Am. St. Rep. 214."

This reference preceded our current judiciary Article V of the Florida Constitution creating the District Courts of Appeal. The District Courts of Appeal succeeded to much of the old jurisdiction of the Florida Supreme Court. Article V, § 5 (3) reads:

"DISTRICT COURTS OF APPEAL . . . (3) Jurisdiction.

Appeals from trial courts in each appellate district . . . may be taken to the court of appeal of such district . . . except those from which appeals may be taken direct . . . to a circuit court . . . *A district court of appeal may issue writs of certiorari* . . . and also all writs necessary or proper to the complete exercise of its jurisdiction" (this is recognized by Rule 2.2, F.A.R.).

This succession to jurisdiction by Florida's District Courts of Appeal was fully recognized by the Florida Supreme Court in a unanimous decision in *Robinson vs. State* (*Fla. 1961*), 132 So.2d 3, wherein the Court said:

"By the same token this Court no longer has extensive power to issue so-called 'common law writs of certiorari' to review judgments of lower courts. This power is now vested in District Courts of Appeal and Circuit Courts, by Article V, Sections 5 and 6, Florida Constitution. In situations in which review of a judgment or decree of a lower court is not otherwise provided for, the District Courts of Appeal are endowed with powers of review limited to a determination of whether the judgment constitutes a deviation from the essential requirements of the law. In a general way, this is the type of so-called common-law certiorari power exercised by this Court prior to the effective date of amended Article V, on July 1, 1957. . . . Our holding simply is that a judgment of a circuit court properly sitting in the exercise of its appellate jurisdiction is subject to review by petition for certiorari, not here, but in the appropriate District Court of Appeal.

• • • • • • • • • • •

"In the instant situation, as pointed out above, we are not authorized to review directly the decisions of a circuit court sitting as an appellate court. As an incident to the disposition of the matter, however, we have pointed out the constitutional impediments similarly applicable to the ap-

pellate jurisdiction of circuit courts in reviewing judgments of other trial courts which pass upon the validity of statutes. Under our constitutional system a district court of appeal is the only court which is authorized to issue a so-called common-law writ of certiorari in this instance. In so doing, that court may then properly consider the proposition that the circuit court, in the exercise of its appellate jurisdiction, in the instant case exceeded its constitutional power and, therefore, deviated from the essential requirements of the law. Any judgment rendered by the court of appeal may then be tendered to us for review under those provisions of Article V, Section 4, Florida Constitution, which authorizes us to review decisions of courts of appeal."

In that Petitioners included as an Appendix in their original Brief seeking certiorari the opinion entitled "*Israel Dresner et als, Appellants, v. City of Tallahassee, Appellee*" (Fla. 1961) 134 So.2d 228, without setting forth any reason for its inclusion, it seems appropriate to comment on the procedures involved in order that this Court not be left with the impression that this cause has proceeded appropriately to the highest Court in the state of Florida. In that proceeding directly from the Municipal Court of the City of Tallahassee, Petitioners sought to lodge this case in the Florida Supreme Court in 1961. They there contended that the trial judge had passed directly on the validity of a state statute, and sought to invoke the appellate jurisdiction of the Florida Supreme Court. The Florida Supreme Court held such an assignment to be erroneous, and treated the City's Motion To Dismiss the Appeal in the Supreme Court as a Motion To Transfer an Appeal improvidently invoked pursuant to Rule 2.1 (A) (5) (d) F.A.R. (Rule included in Appendix B of Respondent's Brief in Opposition to Petition for Writ of Certiorari.) The Florida Supreme Court, in referring the same to the Circuit Court, stated:

"Our opinion is not to be construed in any fashion passing upon the merits of the appeal or the sufficiency of the record, including the Notice of Appeal. These are matters to be disposed of by the Circuit Court in the exercise of its appellate jurisdiction." 134 So.2d 228, 230

Petitioners can not circumvent the review of the District Court of Appeal of Florida, First District, and the Florida Supreme Court by improvidently lodging their cause in the highest court of a state, and, when transferred to the proper court having jurisdiction, claim that the cause has already been there for review.

Under its system of District Courts of Appeal, Florida is divided into three Districts. Each of these District Courts has recognized their rights to grant certiorari to a Circuit Court where such Circuit Court sat exercising final appellate jurisdiction of a lower Court's decision under the Florida Constitution. See: First District: *State vs. Smith* (Fla. 1960), 118 So.2d 792; Second District; *King vs. State* (Fla. 1961) 134 So.2d 502; Third District: *State vs. Katz* (Fla. 1959), 108 So.2d 60; *Campbell vs. County of Dade*, (Fla. 1959) 113 So.2d 708; *City of Miami vs. Berman* (Fla. 1961) 129 So.2d 445.

The Court's attention is respectfully called to a scholarly consideration of the status of certiorari in Florida in a specially concurring Opinion by retired Justice Hobson, joined by a majority of the Court in *King vs. State* (Fla. 1962) 143 So.2d 458.

Therefore, the conclusion is inescapable that Petitioners here did not, in fact, seek review by certiorari to the United States Supreme Court from a final judgment rendered by the highest Court in Florida in which a decision could be had.

The untimely effort by Petitioners in lodging a Petition for Writ of Certiorari in the appropriate District Court does not constitute basis for this Court to consider this cause, because the District Court of Appeal at that point was without jurisdiction to entertain the late application pursuant both to Florida Appellate Rules and the appropriate case law. The Petitioners had slept on their rights, if any there were. *Harris vs. Condermann (Fla. 1959)* 113 So.2d 235.

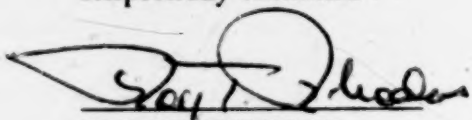
If there is a discretionary review available by a higher court within the state system, this Court has repeatedly held that the exercise of such discretion must be invoked. *Fisher vs. Perkins (Fisher vs. Carrico) (Kty. 1887)*, 122 U. S. 522; *Mullin vs. Western Union Beef Company (Colo. 1899)* 173 U. S. 116; *Stratton vs. Stratton (Ohio 1915)*, 239 U. S. 55; *Matthews vs. Huwe (Ohio 1925)*, 269 U. S. 262; *McMaster vs. Gould (N.Y. 1928)* 276 U. S. 284; See annotation at 7 L.Ed. 593.

As pointed out by Respondent in its Brief in Opposition to Petition for Writ of Certiorari (pages 6, 7) this is the third attempt in so-called "civil rights cases" to by-pass the highest court of Florida in which a decision could be had, and to have the United States Supreme Court grant certiorari to the Circuit Court of the Second Judicial Circuit of Florida. The other two Petitions for Writ of Certiorari were denied, presumably on the grounds urged by Respondent in this instance. See No. 783, *Speed vs. City of Tallahassee*, 356 U.S. 913, 2 L.Ed. 2d 586, 78 S.Ct. 670, March 17, 1958, Petition for Writ of Certiorari to the Circuit Court of Florida, Second Judicial Circuit, denied; and No. 671, *Steele vs. City of Tallahassee* and *Armstrong vs. City of Tallahassee*, 365 U. S. 834, 81 S. Ct. 748, 5 L. Ed. 2d 745, March 6, 1961, Petition for Writ of Certiorari to the Circuit Court of Florida, Second Judicial Circuit, denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Petitioners did not exhaust their state remedies, and, therefore, this Court has no jurisdiction, the judgment being supported by adequate state grounds.

Respectfully submitted



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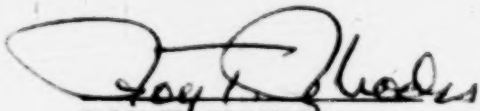
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief on Question of Jurisdiction has, pursuant to Rule 33 (1) of the Rule of the Supreme Court of the United States, been served by air mail upon TOBIAS SIMON, HOWARD W. DIXON and ALFRED I. HOPKINS, 223 Southeast First Street, Miami, Florida and CARL RACHLIN, 280 Broadway, New York, New York, Attorneys for Petitioners this .....2..... day of November, A. D. 1963.



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